

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Nebraska Cooperative Republican Platte
Enhancement Project (N-CORPE),
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case Nos: 14E 020, 14E 021, 14E 023,
14E 024, 14E 025, 14E 026, 14E 028,
14E 029, 14E 030, 14E 031, 14E 032,
14E 034, 14E 035, 14E 036, 14E 037,
14E 038, 14E 039, 14E 040, 14E 041,
14E 042, 14E 043, 14E 044, 14E 045,
14E 046, 14E 047, 14E 048, 14E 049,
14E 050, 14E 051, 14E 052, 14E 053,
14E 054, 14E 055, 14E 056, 14E 057,
14E 059 & 14E 060

Case Nos: 15E 006, 15E 007,
15E 009, 15E 010, 15E 011, 15E 012,
15E 014, 15E 015, 15E 016, 15E 017,
15E 018, 15E 020, 15E 021, 15E 022,
15E 023, 15E 024, 15E 025, 15E 026,
15E 027, 15E 028, 15E 029, 15E 030,
15E 031, 15E 032, 15E 033, 15E 034,
15E 035, 15E 036, 15E 037, 15E 038,
15E 039, 15E 040, 15E 041, 15E 042,
15E 043, 15E 045 & 15E 046

Nebraska Cooperative Republican Platte
Enhancement Project (N-CORPE),
Appellant,

v.

Lincoln County Board of Equalization and
Myron Kockrow,
Appellees,

14E 022, 15E 008

Nebraska Cooperative Republican Platte
Enhancement Project (N-CORPE),
Appellant,

v.

Lincoln County Board of Equalization and
Steve Facka,
Appellees,

14E 058, 15E 044

Nebraska Cooperative Republican Platte
Enhancement Project (N-CORPE),
Appellant,

14E 033, 15E-019

v.

Lincoln County Board of Equalization
And Dick Hasenhauer and Rod Clough,
Appellees.

Nebraska Cooperative Republican Platte
Enhancement Project (N-CORPE),
Appellant,

14E 027, 15E-013

v.

Decision and Order Reversing the Decisions
of the Lincoln County
Board of Equalization

Lincoln County Board of Equalization and
Cutter Cole,
Appellees,

For the Appellant:

Donald G. Blankenau,
Blankenau Wilmoth, LLP

For the Appellee:

Joe W. Wright
Deputy Lincoln County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTIES

The Subject Properties are 41 agricultural parcels located in Lincoln County. The Subject Properties are owned by the Nebraska Cooperative Republican Platte Enhancement Project (N-CORPE), an entity created pursuant to the Interlocal Cooperation Act (the ICA).¹ The 41 parcels have been consolidated for appeal for each of the 2014 and 2015 tax years. At the hearing, the Commission marked five lists of exhibits which correspond to the five groups of parcels referred

¹ Neb. Rev. Stat. §13-801 *et. seq.* (Reissue 2012).

to in the case caption. Each of the second, third, fourth, and fifth groups is separated in the case caption due to the inclusion of parcel lessees as party appellants. The legal descriptions of the properties contained in the first group can be found at Exhibits 1 to 74 respectively. The legal descriptions of the properties contained in the second group (Case Nos. 14E 022 and 15E 008) can be found at Exhibits 1 and 2 respectively. The legal descriptions contained in the third group (Case Nos. 14E 058 and 15E 044) can be found at Exhibits 1 and 2 respectively. The legal descriptions contained in the fourth group (Case Nos. 14E 033 and 15E 019) can be found at Exhibits 1 and 2 respectively. The legal descriptions in the fifth group (Case Nos. 14E 027 and 15E 013) can be found at Exhibits 1 and 2 respectively.

II. PROCEDURAL HISTORY

N-CORPE contends that the Subject Properties are exempt from taxation for both 2014 and 2015. For tax year 2014, the Lincoln County Assessor (the County Assessor) determined that the Subject Properties were not tax exempt and assessed a value for each parcel. N-CORPE protested these assessments to the Lincoln County Board of Equalization (the County Board) and requested that the Subject Properties be exempt from taxation. The County Board determined that the Subject Properties were not exempt from taxation and determined that the assessed values for tax year 2014 were as follows:

Case No.	Parcel #	Acres	Assessor/ County Board Value
14E 020	107695	157.01	\$60,450
14E 021	107697	157.01	\$59,680
14E 022	107835	315.38	\$121,420
14E 023	108465	640	\$291,610
14E 024	108470	640	\$246,395
14E 025	104150	625.34	\$240,760
14E 026	101710	627.2	\$241,470
14E 027	101715	640	\$449,145
14E 028	101725	640	\$975,505
14E 029	107990	640	\$246,400
14E 030	101735	640	\$244,855
14E 031	101740	320	\$123,200
14E 032	101790	640	\$254,990
14E 033	103765	480	\$215,185

Case No.	Parcel #	Acres	Assessor/ County Board Value
14E 034	101900	161.8	\$60,760
14E 035	101925	641.24	\$246,880
14E 036	102520	80	\$30,800
14E 037	102530	640	\$1,377,570
14E 038	102535	160	\$60,595
14E 039	102540	160	\$62,290
14E 040	102620	160	\$64,530
14E 041	102625	480	\$185,235
14E 042	102630	320	\$128,185
14E 043	102635	160	\$103,520
14E 044	102640	160	\$62,340
14E 045	104215	640	\$245,640
14E 046	104220	640	\$246,405
14E 047	104225	640	\$246,400
14E 048	104235	640	\$246,400
14E 049	84995	640	\$244,860
14E 050	102665	640	\$246,400
14E 051	101815	640	\$246,400
14E 052	101820	640	\$246,400
14E 053	101825	640	\$246,400
14E 054	101840	322.88	\$124,310
14E 055	101855	127.56	\$49,110
14E 056	101857	157.72	\$60,725
14E 057	101861	77.24	\$29,735
14E 058	102685	320	\$144,210
14E 059	101870	160.12	\$61,645
14E 060	101880	294.87	\$121,570

Again in tax year 2015, the County Assessor determined that the Subject Properties were not tax exempt and determined an assessed value for each parcel. N-CORPE protested these assessments to the County Board and requested that the subject properties be exempt from taxation. The County Board determined that the subject properties were not exempt from taxation and determined that the assessed values for tax year 2015 were as follows:

Case No.	Parcel No.	Acres	Assessor/ County Board Value
15E 006	107695	157.01	\$86,355
15E 007	107697	157.01	\$85,255

Case No.	Parcel No.	Acres	Assessor/ County Board Value
15E 008	107835	315.38	\$173,460
15E 009	108465	640	\$396,390
15E 010	108470	640	\$351,990
15E 011	104150	625.34	\$343,940
15E 012	101710	627.2	\$344,965
15E 013	101715	640	\$523,810
15E 014	101725	640	\$965,620
15E 015	107990	640	\$352,005
15E 016	101735	640	\$349,790
15E 017	101740	320	\$176,000
15E 018	101790	640	\$349,810
15E 019	103765	480	\$293,895
15E 020	101900	161.8	\$86,800
15E 021	101925	641.24	\$352,685
15E 022	102520	80	\$44,000
15E 023	102530	640	\$342,545
15E 024	102535	160	\$86,325
15E 025	102540	160	\$88,280
15E 026	102620	160	\$90,000
15E 027	102625	480	\$263,660
15E 028	102630	320	\$180,295
15E 029	102635	160	\$128,355
15E 030	102640	160	\$88,240
15E 031	104215	640	\$350,900
15E 032	104220	640	\$352,005
15E 033	104225	640	\$352,000
15E 034	104235	640	\$352,000
15E 035	84995	640	\$349,800
15E 036	102665	640	\$352,000
15E 037	101815	640	\$352,000
15E 038	101820	640	\$352,000
15E 039	101825	640	\$352,000
15E 040	101840	322.88	\$177,585
15E 041	101855	127.56	\$70,160
15E 042	101857	157.72	\$86,750
15E 043	101861	77.24	\$42,480
15E 044	102685	320	\$196,350
15E 045	101870	160.12	\$88,065
15E 046	101880	294.87	\$162,180

N-CORPE appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission) for tax years 2014 and 2015. The appeals were consolidated for hearing. Prior to the hearing, the parties exchanged exhibits and submitted a 25 page Amended Stipulation regarding the appeals.² The Commission held a consolidated hearing on May 23, 2016. The parties submitted briefs subsequent to the hearing, which were received by the Commission on July 22, 2016, September 6, 2016, and October 6, 2016.

III. STANDARD OF REVIEW

The Commission’s review of the determination of the county board of equalization is de novo.³ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the “board of equalization has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its action.”⁴ That presumption remains, “until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.”⁵

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

In an appeal, the Commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.”⁸ The Commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to

² Exhibit 275.

³ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ See, e.g., *JQH La Vista Confr. Ctr. v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124, 825 N.W.2d 447, 451-52 (2013), quoting *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

it.⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. EXEMPTION LAW

The Nebraska Constitution specifies that property of the state and its governmental subdivisions used for authorized public purposes is exempt from taxation and permits the Legislature to classify other exempt properties “owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user.”¹¹ Statutes that exempt property from taxation are to be “strictly construed, and the burden of proving the right to exemption is on the claimant.”¹² There are two overriding factors to be considered when a request has been made for an exemption. Those two factors are: the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property, and that the power and right of the state to tax is always presumed.¹³

Nebraska courts have developed several principles concerning requests for exemptions: (1) an exemption is never presumed;¹⁴ (2) the alleged exempt property must clearly come within the provision granting the exemption;¹⁵ (3) the laws governing property tax exemptions must be strictly construed;¹⁶ (4) the courts must give a “liberal and not a harsh or strained construction ...to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized[;]”¹⁷ and (5) this interpretation should always be reasonable.¹⁸

The intended use of real property is not determinative of whether property qualifies for an exemption as used for a public purpose. Property owned by the State or one of its governmental

⁹ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹¹ Neb. Const., Art. VIII, § 2.

¹² *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009) (citations omitted).

¹³ See, e.g., *Jaksha v. State*, 241 Neb. 106, 112, 486 N.W.2d, 858, 864 (1992); *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com’rs*, 122 Neb. 586, 241 N.W. 93 (1932).

¹⁴ *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

¹⁵ *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

¹⁶ *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).

¹⁷ *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

¹⁸ *Id.* (citing, *Young Men’s Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

subdivisions is exempt to the extent it is “used or being developed for use...for a public purpose.”¹⁹ The property is exempt only to the extent there is active use for a public purpose or active development for a public purpose.²⁰ Public purpose means, in relevant part, “use of the property (A) to provide...the general operation of government... or (B) to carry out the duties and responsibilities conferred by law with or without consideration.”²¹ Leasing property to a private party does not meet the definition of a public purpose unless: (1) the lease is at fair market value; and (2) the lease is for a public purpose.²²

The exemption of property owned by the state or its governmental subdivisions is authorized “to the extent” it is used or developed for use for a public purpose.²³ The phrase “to the extent” indicates that it is possible for property owned by the state or its governmental subdivisions to be partially exempt.²⁴

In cases where it is determined that the property, when considered as a whole, is not used entirely for a public purpose, but the property has separate and distinct use portions, an exemption from taxes for the portion used for a public purpose shall be allowed.²⁵

There is a separate analysis for when property owned by the state or its governmental subdivisions has multiple simultaneous uses: “When a parcel of governmentally owned property is used for several purposes simultaneously, the determination of taxable status should be based on the predominant use of the property. The predominant use of the property is the primary or dominant use.”²⁶

Partial use analysis and predominant use analysis are materially different. A partial use analysis looks for distinct portions of the property having separate and distinct uses; a predominant use analysis focuses on the uses of the property that are comingled such that some portion of the property is being used for multiple purposes at the same time.

¹⁹ Neb. Rev. Stat. §77-202(1)(a).

²⁰ *Id.*

²¹ Neb. Rev. Stat. §77-202(1)(a)(ii).

²² See, *id.*

²³ *Id.*

²⁴ Neb. Rev. Stat. §77-202(1)(a)(ii).

²⁵ 350 Neb. Admin. Code, ch. 15 §003.07 (03/15/2009).

²⁶ 350 Neb. Admin. Code, ch. 15 §003.07 (03/15/2009).

Additional factors to determine whether property owned by the state or its governmental subdivisions which is used simultaneously for multiple purposes is exempt property include the following:

- (1) Whether the use of property assists the government entity in meeting a long term or ongoing purpose;
- (2) Whether the governmental entity has spent significant money in making the property ready for its public purpose use in comparison with any revenue generated by its nonpublic use; and
- (3) Whether the public purpose use is ongoing throughout the year as opposed to the seasonal nature of its nonpublic use.²⁷

V. SUMMARY OF THE ISSUES

In 2011, the Appellant (“N-CORPE”) was formed when four Nebraska Natural Resources Districts (Upper Republican NRD, Middle Republican NRD, Lower Republican NRD, and Twin Platte NRD) agreed to create an interlocal entity²⁸ to jointly administer statutory duties to aid Nebraska’s efforts to comply with the Republican River Compact (the “Compact”).²⁹ The Compact is an agreement involving the states of Nebraska, Kansas, and Colorado created in 2003 as a result of litigation among the three states. The Compact was designed to allocate water from the Republican River among the three Compacting States. Under the Compact, Nebraska is required to limit its consumption of water from the Republican River. The consumption is calculated through multi-year retrospective averaging. The Compacting States are thus required to annually determine the cumulative volume of water that was or would have been flowing in the Republican River absent the activities of man in the prior year. Once the volume is determined, it is allocated among the Compacting States and their consumptive use of surface water is calculated. To achieve compliance, each state must ensure that it does not consume more surface water than was allocated to it.

Each of the Compacting States is allowed to offset its allocated consumption through stream flow augmentation projects. The four NRDs noted above created N-CORPE as a vehicle to help achieve compliance by offsetting stream flow depletion in the Republican River. N-CORPE, as

²⁷ 350 Neb. Admin. Code, ch. 15 §003.07A (03/15/2009).

²⁸ Neb. Rev. Stat § 13-801 *et seq.* (Reissue 2012).

²⁹ See, Exhibit 206.

an interlocal entity, purchased the Subject Properties and initiated efforts to utilize them to comply with the Compact.³⁰

The County Board does not dispute that N-CORPE is a governmental entity, that it acquired all of the Subject Property on December 4, 2012, that it owned each Subject Property as of the respective effective dates of January 1, 2014 and January 1, 2015, that the primary use of the acquisition of each Subject Property was to utilize the underlying groundwater for purposes of stream flow into the Republican River, and that N-CORPE initiated construction of the augmentation project in September, 2013.³¹ However, the County Board contends that N-CORPE had the ability to possess only the rights to the use of the groundwater appurtenant to each Subject Property. In other words, the County Board asserts that N-CORPE acquired more interest than necessary to perform the stream flow augmentation project. Therefore, according to the County Board, a situation was created where two dominant uses of each Subject Property were created, one for the land and one for the privilege of utilizing the groundwater under the land for augmentation purposes. The County Board agrees that the privilege (underlying water rights) is for a public purpose and should be exempt from taxation. However, the County Board states that the land (absent the water rights) was not needed for N-CORPE's augmentation project as it is not being used for a public purpose. Accordingly, the County Assessor valued each Subject Property as grassland for 2014 and 2015.

The County Board asserts that the Commission's examination of the use of the Subject Property should be limited to the surface of the Subject Property and all improvements located thereon, but should not take into account the use of the water rights. The County Board also contends that N-CORPE acquired more interest in each Subject Property than it needed to perform its public purpose of supplying groundwater for the augmentation projects. In other words, the County Board asserts that the Commission's examination of the use of each Subject Property should consider both the underground use of the Subject Properties and the surface use of the Subject Properties. In this context, the County Board asserts that N-CORPE was not required to purchase each property, but instead could have purchased only the water or the water rights. The County Board asserts that because there was another way to accomplish the N-

³⁰ See, Interlocal Cooperation Agreement, E206:144-150, and Interlocal Cooperation Agreement (Amended and Restated as of December 17, 2013), Exhibit 206:151-158.

³¹ Exhibit 275:23-24.

CORPE's purpose of stream flow augmentation, that any property right associated with any Subject Property that was not necessary for augmentation is not a public purpose and should be taxed accordingly.

N-CORPE asserts that it is entitled to an exemption for its entire interest in each Subject Property because it has met its burden of proving that it is a governmental subdivision, it owns all of the Subject Properties, any leases involving any Subject Property are at fair market value, and the predominant use of the Subject Properties is for a public purpose.

For further context, we must look at the specific powers of natural resources districts and N-CORPE under Nebraska law.

VI. AUTHORITY OF N-CORPE

Under Nebraska Law, natural resources districts have limited powers.³² Specifically, the Nebraska Supreme Court has held that:

A natural resources district, as a political subdivision, has only that power delegated to it by the Legislature, and a grant of power to a political subdivision is strictly construed. A natural resources district possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; and third, those essential to the declared objects and purposes of the district -- not simply convenient, but indispensable.³³

The purposes of natural resources districts are

to develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management.³⁴

³² Neb. Rev. Stat. §46-707 (Reissue 2010). See, generally, Neb. Rev. Stat. §2-3201 et. seq. (Reissue 2012).

³³ *Medicine Creek v. Middle Repub. Nat. Res. Dist.*, 296 Neb. 1, 5, 892 N.W.2d 74, 78 (2017), citing *Wagoner v. Central Platte Nat. Resources Dist.*, 247 Neb. 233, 526 N.W.2d 422 (1995).

³⁴ Neb. Rev. Stat. §2-3229 (Reissue 2012).

Each of the natural resources districts involved in this appeal have also been expressly granted the authority to acquire title to real property.³⁵

Central to the resolution of the issues in these appeals is the answer to the question whether N-CORPE, an entity created by four natural resources districts under the ICA,³⁶ has the same authority as each natural resources district that created it. Our answer to that question is yes, as explained below.

A natural resources district is a public agency, as defined in the ICA, by virtue of being a political subdivision.³⁷ Under the ICA, any two or more public agencies may enter into an agreement with other public agencies³⁸ and may form a separate legal entity,³⁹ known as a joint entity.⁴⁰ Once properly formed, the joint entity “may exercise and enjoy all the powers, privileges, and authority conferred by the [ICA] upon a public agency.”⁴¹ The authority of the joint entity is “limited to executing the enumerated powers of the agencies which created it.”⁴² In terms of construction, the provisions of the ICA

shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized by the act and shall be deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon political subdivisions, agencies, and others by law.⁴³

In this context, the purpose of the ICA is “to permit local governmental units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities.”⁴⁴

In a recent case, the Nebraska Supreme Court addressed these very issues. In *Estermann v. Bose*,⁴⁵ the Court reviewed the authority of N-CORPE, the same litigant as in the present appeal, in a dispute involving a challenge to an eminent domain action taken by N-CORPE. After

³⁵ Neb. Rev. Stat. §2-3233 (Reissue 2012).

³⁶ See, Interlocal Cooperation Agreement, E206:144-150, and Interlocal Cooperation Agreement (Amended and Restated as of December 17, 2013), E206:151-158.

³⁷ *Medicine Creek v. Middle Repub. Nat. Res. Dist.*, 296 Neb. 1, 5, 892 N.W.2d 74, 78 (2017); Neb. Rev. Stat. §13-803(2) (Reissue 2012).

³⁸ Neb. Rev. Stat. §13-804(2) (Reissue 2012). See, *City of Falls City v. Nebraska Mun. Power Pool*, 279 Neb. 238, 777 N.W.2d 327 (2010).

³⁹ Neb. Rev. Stat. §13-804(3)(b) (Reissue 2012).

⁴⁰ Neb. Rev. Stat. §13-803(1) (Reissue 2012). See, *Kubicek v. City of Lincoln*, 265 Neb. 521, 658 N.W.2d 291 (2003).

⁴¹ Neb. Rev. Stat. §13-804(1) (Reissue 2012). See, *Estermann v. Bose*, 296 Neb. 228, 241, 892 N.W.2d 857, 868 (2017).

⁴² *Estermann*, 296 Neb. 228, 241, 892 N.W.2d 857, 867 (2017), See, Neb. Rev. Stat. §13-803(1) (Reissue 2012).

⁴³ Neb. Rev. Stat. §13-825 (Reissue 2012).

⁴⁴ Neb. Rev. Stat. §13-802 (Reissue 2012).

⁴⁵ 296 Neb. 228, 892 N.W.2d 857 (2017).

reviewing the provisions of the ICA, the Court concluded that N-CORPE, “did not lose any of the powers, privileges, or authorities that [the NRD’s creating it] separately held,... Instead, the powers, privileges, and authorities that the NRD’s were capable of exercising separately could be exercised and enjoyed jointly with the other NRD’s through the mechanism of their joint entity.”⁴⁶ Further, the court stated,

the formation of N-CORPE did not remove or degrade powers that the Legislature had already granted to the NRD's by statute. Rather, the formation by the NRD's of the joint entity N-CORPE under the provisions of the ICA created a method of exercising [its enumerated powers] which was "supplemental and additional to, and not in derogation of, powers" conferred on the NRD's.⁴⁷

Therefore, the Commission finds that N-CORPE has the same authority under the ICA as each of the natural resources districts that created it.

VII. SCOPE OF THE COMMISSION’S PUBLIC PURPOSE ANALYSIS

The Commission finds that our public purpose analysis, as required by Neb. Rev. Stat. §77-202(1), should not be limited to the surface of the Subject Property. The ownership of real property interests is best described by what has been termed as a bundle of rights.⁴⁸ The bundle of rights theory imagines each property right and privilege as a distinct stick that is contained in a larger bundle of sticks.⁴⁹ The size of the bundle of sticks, and the rights and privileges contained within the bundle, are dependent upon the type of ownership interest represented.⁵⁰ “Ownership of the fee simple interest is equivalent to ownership of the complete bundle of sticks, while one or more of the sticks (or a portion of individual sticks) can represent a partial interest in a specific property.”⁵¹ If the Commission is to determine the predominant use of real property, it must examine how all portions of the real property are used, including all rights and privileges associated with the real property, including, but not limited to, water rights and privileges.

N-CORPE asserts that the Commission should examine the Subject Property as it fits into its larger augmentation project. It is appropriate for the Commission’s examination to take into

⁴⁶ 296 Neb. at 243, 892 N.W.2d at 869 (2017).

⁴⁷ *Id.*; See also, Neb. Rev. Stat. §13-825 (Reissue 2012).

⁴⁸ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 5 (14th ed. 2013).

⁴⁹ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 5 (14th ed. 2013).

⁵⁰ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 5 (14th ed. 2013).

⁵¹ See, The Appraisal Institute, *The Appraisal of Real Estate*, at 5 (14th ed. 2013).

account N-CORPE's use of each Subject Property in meeting a long term purpose, but Nebraska law permits the taxation of any portion of property owned by the State or its governmental subdivisions that is not used for a public purpose.⁵²

N-CORPE notes that after it purchased the Subject Property, it systematically removed irrigation equipment and made necessary alterations to operate the augmentation project by pumping the groundwater underlying each Subject Property for stream flow augmentation. It has not irrigated any Subject Property. N-CORPE purchased in excess of 19,000 total acres for over \$83 million dollars. It also leased approximately 660 acres to private lessees for approximately \$54,200. N-CORPE purchased the Subject Properties because the number of acres would allow it to pump the amount of groundwater necessary to comply with the Compact and to operate its project within the confines of the statutory, administrative, and common law limitations on the use of groundwater. With respect to the removal of irrigation equipment, N-CORPE asserted that ownership of the Subject Properties was necessary to retire the irrigation uses of the properties in order to offset the amount of groundwater needed for the augmentation project. Based on all of these factors, it is appropriate that the Commission's analysis should not be limited to the surface of the Subject Property

VIII. PUBLIC PURPOSE USES OF THE N-CORPE PROPERTIES

The parties stipulated that the primary use of N-CORPE's purchase of the Subject Properties was to utilize the groundwater available for its augmentation project.⁵³ The County Board, however, contends that two dominant uses exist: one for the groundwater and one for the surface. The surface use of the Subject Properties was generally set up to resort to native grassland (except for the acres that were leased). The County Board contends that this basically means the Subject Properties were simultaneously used for multiple purposes. When real property owned by the state or its governmental subdivisions is used simultaneously for multiple uses the property is only exempt if the predominant use of the real property is for a public purpose.⁵⁴ Some factors for consideration include but are not limited to:

⁵² See, 350 Neb. Admin. Code, ch. 15 §003.07 (03/15/2009).

⁵³ Exhibit 275:23.

⁵⁴ See, 350 Neb. Admin. Code, ch. 15 §003.07 (03/15/2009).

- (1) Whether the use of property assists the government entity in meeting a long term or ongoing purpose;
- (2) Whether the governmental entity has spent significant money in making the property ready for its public purpose use in comparison with any revenue generated by its nonpublic use; and
- (3) Whether the public purpose use is ongoing throughout the year as opposed to the seasonal nature of its nonpublic use.⁵⁵

First, the evidence indicates that use of the surface property assists in N-CORPE's long term and ongoing development of an augmentation project to comply with the Compact, for management of water use, for conducting range management, and for controlling the erosion of soils. All of these activities fall within the statutorily declared purview of the N-CORPE.⁵⁶

The County Board argues that the N-CORPE could have undertaken other actions to meet its goals other than by purchasing the Subject Properties in fee simple, but that argument is irrelevant. There is no requirement that the State or its governmental subdivisions restrict their methods for performing their duties to the least expensive, least restrictive, or least impactful means for any real property owned by the State or its governmental subdivisions in order to maintain a property tax exemption. Indeed, there is no requirement that the method chosen by the State or its governmental subdivisions even be a good method or a generally accepted method in order for it to be used for a public purpose. Nor is there a requirement that the long term project and goals of the State or its governmental subdivisions be the best goals or be generally accepted for real property purchased and leased in order that those long term goals are exempt. The Commission will not impose such a requirement that is not found in the Nebraska Constitution, Statutes, or Rules and Regulations. Nor will the Commission stand in place of the N-CORPE to determine whether these goals or methods are the best or are generally accepted. The N-CORPE is directed by publicly elected officials who are entrusted with these decisions.⁵⁷ Other than determining whether the actions fall within the N-CORPE's statutory duties and authorities, the

⁵⁵ 350 Neb. Admin. Code, ch. 15 §003.07A (03/15/2009).

⁵⁶ "The purposes of natural resources districts shall be to develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management." Neb. Rev. Stat. §2-3229 (Reissue 2012).

⁵⁷ See, Neb. Rev. Stat. §2-3214 (Reissue 2012).

Commission will not evaluate the performance of these elected officials based upon any suggested subjective criteria not based in Nebraska law.

Dr. Jasper Fanning, General Manager of the URNRD, was the primary witness for N-CORPE. According to Dr. Fanning, N-CORPE determined that it would comply with the integrated management plan and the Republican River Compact in part by creating an augmentation project.⁵⁸ The creation of the augmentation project involved diverting water from the Subject Properties to Medicine Creek, a tributary of the Republican River.⁵⁹ This augmentation is possible as a result of the privileges N-CORPE obtained through ownership of the parcels. These privileges are included in the fee simple estate of the Subject Property, and the uses of these privileges are appropriately examined when determining whether the Subject Property is used for a public purpose.⁶⁰

After N-CORPE diverted water from the parcels, it then planted natural grasses or other cover crops for authorized purposes including erosion control and range management.⁶¹ The introduction of natural grasses or other crops clearly meets both of these authorized purposes. Dr. Fanning also testified that the cover crop was planted to prevent soil erosion.

The primary thrust of the County Board's argument pertains to the County Assessor's conclusion that use of the land (surface) from that of the groundwater (underground) of the Subject Properties could be separated for property tax purposes. Again, this position relies upon the theory that N-CORPE's purchase of the surface land was unnecessary and serves no public purpose. This issue involves whether or not the County Board may exempt the underlying groundwater needed for the augmentation process, yet tax the land (surface) on a non-irrigated basis. Upon consideration of the evidence and legal arguments, we conclude that it may not. The parties do not dispute that the predominant purpose of the N-CORPE project was to access groundwater for compliance with the Compact. The County Assessor and the County Board acknowledged such usage to be the ultimate purpose of the acquisition of the Subject Properties. However, the County Assessor maintained that she could still tax the land above the

⁵⁸ An integrated management plan or IMP, is an agreed upon plan between the URNRD and the Department of Natural Resources for the balancing of water use and water supplies that must contain ground water and surface water controls. See, Neb. Rev. Stat. §46-715 (Reissue 2010).

⁵⁹ See, Exhibit 275:23.

⁶⁰ See, *Sorensen v. Lower Niobrara Natural Resources Dist.*, 221 Neb. 180, 191, 376 N.W.2d 539, 547-548.

⁶¹ See, Neb. Rev. Stat. §2-3229 (Reissue 2012).

groundwater, albeit on a non-irrigated basis. The County Board was unable to formulate a legal basis for the separation of groundwater and surface uses for tax purposes. The Commission therefore finds that the use of the Subject Properties' groundwater was clearly the dominant use of the Subject Properties, regardless of how the surface land was utilized.

We therefore find that N-CORPE has met its burden of persuasion in showing that the Subject Properties with the following Case numbers were used for public purposes and were entitled to an exemption for both tax years 2014 and 2015:

14E 020, 15E 006	14E 036, 15E 022	14E 052, 15E 038
14E 021, 15E 007	14E 038, 15E 024	14E 053, 15E 039
14E 024, 15E 010	14E 039, 15E 025	14E 054, 15E 040
14E 025, 15E 011	14E 040, 15E 026	14E 055, 15E 041
14E 026, 15E 012	14E 041, 15E 027	14E 056, 15E 042
14E 029, 15E 015	14E 042, 15E 028	14E 057, 15E 043
14E 031, 15E 017	14E 044, 15E 030	14E 059, 15E 045
14E 034, 15E 020	14E 050, 15E 036	14E 060, 15E 046
14E 035, 15E 021	14E 051, 15E 037	

IX. N-CORPE PROPERTIES WITH NON-PUBLIC USES

Due to a lack of sufficient evidence showing that certain improvements on some of the Subject Properties were used for a public purpose, and that these parcels were entitled to a complete exemption, some of the improvements on each of the following properties have taxable value.

In Case Nos. 14E 023 and 15E 009, for both tax years, a farm utility building was present on the property.⁶² The Commission finds that the assessment of the improvement was reasonable at an improvement value of \$46,540 and a farm site value of \$600. Therefore, the total taxable value should be \$47,140 for each tax year.⁶³

In Case No. 14E 028, for tax year 2014, numerous improvements were present on the property.⁶⁴ The Commission finds that the assessment of the improvements was reasonable at a total improvement value \$730,705 and a farm site value of \$4,175. Therefore, the total taxable

⁶² Exhibit 275:3.

⁶³ See, Exhibit 77:11 and Exhibit 114:10.

⁶⁴ Exhibit 275:5-6.

value should be \$734,880 for tax year 2014.⁶⁵ In Case No. 15E 014, for tax year 2015, the grain handling facility, beam scale, and ten grain bins were no longer present.⁶⁶ The Commission finds that the assessment of the remaining improvements on the property for tax year 2015 was reasonable at an improvement value of \$614,245 and a farm site value of \$4,175. Therefore, the total taxable value of the property for tax year 2015 should be \$618,420.⁶⁷

In Case Nos. 14E 043 and 15E 029, for both tax years, a house and several outbuildings were present on the property.⁶⁸ The Commission finds that the assessment of the improvements was reasonable at an improvement value of \$39,040 and a site value total of \$2,895. Therefore, the total taxable value should be \$41,935 for each tax year.⁶⁹

For each of the Subject Properties in Section IX of this Order, the Commission finds that the remainder of the parcel should be exempt from property tax for the reasons discussed in Section VIII of this Order above.

X. PUBLIC PURPOSE USE ANALYSIS OF N-CORPE PROPERTIES WITH A LEASE TO A PRIVATE PARTY

In order to maintain an exemption, property owned by N-CORPE that is leased to a private party must be leased for a public purpose at fair market value.⁷⁰ Dr. Fanning testified that all leases involving N-CORPE in these appeals were for fair market value. The County Board did not rebut this evidence.

A. Non-Public Purpose Use Stipulation

The parties N-CORPE and the County Board Stipulated⁷¹ that portions of some of the Subject Properties had uses for non-public purposes for both tax years. Each property was leased by N-CORPE to a private party.

⁶⁵ See, Exhibit 81:11 and Exhibit 81:13.

⁶⁶ Exhibit 275:5-6.

⁶⁷ See, Exhibit 118:14.

⁶⁸ Exhibit 275:13.

⁶⁹ See, Exhibit 95:10, Exhibit 95:12, Exhibit 132:11, and Exhibit 132:14.

⁷⁰ Neb. Rev. Stat. §77-202(1)(a)(ii).

⁷¹ The parties N-CORPE and the County Board stipulated that in relation to eleven of the Subject Properties some of the property was used for non-public purposes. See, Exhibit 275: 2, 5, 7-10, 14-16, and 21. In the Amended Stipulation, which was received in evidence at the hearing on May 23, 2016, the parties N-CORPE and the County Board identified five additional lessees. See, Exhibit 275. The Amended Stipulation was originally prepared as a typewritten stipulation. Counsel for the parties N-CORPE

In Case Nos. 14E 022 and 15E 008, under the terms of a verbal lease, the lessee used 80 acres for his own private purposes for both tax years. The parties N-CORPE and the County Board stipulated,⁷² and the Commission finds, that the use of the 80 acres was not for a public purpose and the assessment of the 80 acres was reasonable at a value of \$30,800⁷³ for tax year 2014 and \$44,000⁷⁴ for tax year 2015.

In Case Nos. 14E 027 and 15E 013, the parties N-CORPE and the County Board stipulated⁷⁵ that under the terms of a lease,⁷⁶ a private party rented a 1994 modular house from N-CORPE and the lease was for a non-public purpose.⁷⁷ The Commission finds that the use of the modular house was not for a public purpose and the assessment of the modular house was reasonable. The Subject Property also contained other numerous improvements⁷⁸ that were not subject to the terms of the lease.⁷⁹ Due to a lack of sufficient evidence showing that the improvements were used for a public purpose, the Commission finds that these improvements should be subject to property tax. Therefore, the Commission finds that the assessment of all of the improvements in Case No. 14E 027 for tax year 2014 was reasonable at a total improvement value of \$185,555⁸⁰ and a site value of \$21,840.⁸¹ Therefore, the total taxable value should be \$207,395 for tax year 2014.⁸² In regard to the same property for tax year 2015, two small mobile homes had been removed.⁸³ Therefore, for tax year 2015, the Commission finds that the assessment of the remaining improvements on the property for tax year 2015 was reasonable at an improvement value of \$156,615⁸⁴ and a site value of \$21,840.⁸⁵ Therefore, the total taxable value of the property for tax year 2015 should be \$178,455.

and the County Board signed the document, which had been altered by handwriting on multiple pages, and offered the modified document as evidence. The handwriting included retitling the document as “Amended Stipulation,” as well as identifying the eleven lessees and relating their names to lease agreements between N-CORPE and the eleven lessees.

⁷² Exhibit 275:2.

⁷³ Exhibit 3:12.

⁷⁴ Exhibit 4:11.

⁷⁵ Exhibit 275:5.

⁷⁶ Exhibit 217.

⁷⁷ Exhibit 275:5.

⁷⁸ See, Exhibit 275:5.

⁷⁹ See, Exhibit 217.

⁸⁰ Exhibit 3:11.

⁸¹ Exhibit 3:17.

⁸² See, Exhibit 3:11 and Exhibit 3:17.

⁸³ Exhibit 275:5.

⁸⁴ Exhibit 5:5.

⁸⁵ Exhibit 5:9.

For each of the Subject Properties in Section X(A) of this Order, the Commission finds that the remainder of the parcel should be exempt from property tax for the reasons discussed in Section VIII of this Order above.

B. Exemptions Due to Tax Status Changes

Several Subject Properties had leases involving N-CORPE and a private party that expired prior to the tax year 2014 or 2015 levy dates. When the tax status of real property owned by the state or its governmental subdivisions changes after January 1 but before the levy date, the county assessor is required to modify its determination of the tax status as of the levy date.⁸⁶ The levy date is October 15.⁸⁷

1. Properties With Tax Status Changes in 2014

For the property in Case No. 14E 030, each of two leases terminated March 15, 2014.⁸⁸ For the property in Case No. 14E 032, the lease terminated March 15, 2014.⁸⁹ For the properties in Case Nos. 14E 045 to 14E 049, the lease terminated April 30, 2014.⁹⁰ For the property in Case No. 14E 058, the lease terminated on March 15, 2014.⁹¹ For the property in 14E 037, a lease commenced in September, 2013,⁹² but N-CORPE sold the parcel to the lessee on June 2, 2014.⁹³

In each of these appeals, the Commission finds that the change in the use of the properties, or the sale of the property, resulted in a change in tax status prior to the tax levy date of October 15, 2014, and that N-CORPE's use of the properties as of that date constitutes use for a public purpose for the reasons discussed in Section VIII of this Order above. For each of these properties, the Commission finds that there is sufficient evidence to support a tax status change and that the Subject Properties should be exempt from property tax for tax year 2014.

⁸⁶ See, 350 Neb. Admin. Code, ch. 15 §003.11A (03/15/2009).

⁸⁷ See, Neb. Rev. Stat. §77-1601(1) (Reissue 2009).

⁸⁸ See, Exhibit 215:1 and Exhibit 216:1.

⁸⁹ See, Exhibit 216:1.

⁹⁰ See, Exhibit 214:6

⁹¹ See, Exhibit 213:1.

⁹² Exhibit 274:1.

⁹³ Exhibit 126:10. The parties N-CORPE and the County Board stipulated that a house situated on the property and subject to the terms of a lease, as well as a building site were not used for a public purpose for tax year 2014. Exhibit 275:10. However, it appears the stipulation was based upon the belief that the sale occurred June 2, 2015, rather than June 2, 2014. See, Exhibit 275:10. According to the property record card, the sale actually occurred on June 2, 2014. See, Exhibit 126:10. The sale in 2014 involved splitting the property and selling the portion that included all of the improvements to the prior lessee.

Since each lease expired prior to the levy date in 2014, or the property was sold in 2014, and for the reasons discussed in Section VIII of this Order above, we find that N-CORPE has also met its burden of persuasion in showing that the same properties are entitled to an exemption for tax year 2015 in Case Nos. 15E 016, 15E 018, 15E 023, 15E 031, 15E 032, 15E 033, 15E 034, 15E 035, and 15E 044.

2. Property With a Tax Status Change in 2015

The Subject Property in Case No. 14E 033 had a lease in effect for all of 2014 but the lease expired prior to the tax year 2015 tax levy date of October 15, 2015. The Commission finds that eight grain bins located on the Subject Property in Case No. 14E 033 had non-public uses for tax year 2014, but finds that there is sufficient evidence to support a change in taxable status for the same property in Case No. 15E 019 for tax year 2015.

The parties N-CORPE and the County Board Stipulated⁹⁴ that eight grain bins on the Subject Property were used for non-public purposes for both tax years. The grain bins were leased by N-CORPE to a private party.⁹⁵ The lease expired on September 1, 2015, prior to the tax levy date of October 15, 2015.

The Commission finds that the use of the grain bins was not for a public purpose and the assessment of the grain bins for tax year 2014 in Case No. 14E 033 was reasonable at an improvement value of \$30,935⁹⁶ and a site value of \$600.⁹⁷ Therefore, the total taxable value should be \$31,535 for tax year 2014. The Commission also finds that, due to the change in tax status in 2015, N-CORPE has met its burden of persuasion in showing that the same property is entitled to an exemption for tax year 2015 in Case No. 15E 019.

For each of the Subject Properties in Section X(B) of this Order, the Commission finds that the remainder of the parcel should be exempt from property tax for the reasons discussed in Section VIII of this Order above.

⁹⁴ See, Exhibit 275:8.

⁹⁵ Exhibit 212.

⁹⁶ Exhibit 3:11.

⁹⁷ Exhibit 3:12.

XI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations in all of the above captioned appeals. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable in all of the above-captioned appeals. For all of the reasons set forth above, the decisions of the County Board should be Vacated and Reversed.

XII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lincoln County Board of Equalization determining that the Subject Property in all of the above-captioned appeals were not exempt for tax years 2014 and 2015 are vacated and reversed.
2. The exemption status or taxable values of the Subject Properties for tax year 2014 shall be as follows:

14E 020	Exempt	14E 034	Exempt	14E 048	Exempt
14E 021	Exempt	14E 035	Exempt	14E 049	Exempt
14E 022	\$ 30,800	14E 036	Exempt	14E 050	Exempt
14E 023	\$ 47,140	14E 037	Exempt	14E 051	Exempt
14E 024	Exempt	14E 038	Exempt	14E 052	Exempt
14E 025	Exempt	14E 039	Exempt	14E 053	Exempt
14E 026	Exempt	14E 040	Exempt	14E 054	Exempt
14E 027	\$207,395	14E 041	Exempt	14E 055	Exempt
14E 028	\$734,880	14E 042	Exempt	14E 056	Exempt
14E 029	Exempt	14E 043	\$ 41,935	14E 057	Exempt
14E 030	Exempt	14E 044	Exempt	14E 058	Exempt
14E 031	Exempt	14E 045	Exempt	14E 059	Exempt
14E 032	Exempt	14E 046	Exempt	14E 060	Exempt
14E 033	\$ 31,535	14E 047	Exempt		

3. The exemption status or taxable values of the Subject Properties for tax year 2015 shall be as follows:

15E 006	Exempt	15E 009	\$ 47,140	15E 012	Exempt
15E 007	Exempt	15E 010	Exempt	15E 013	\$178,455
15E 008	\$ 44,000	15E 011	Exempt	15E 014	\$618,420

15E 015	Exempt	15E 026	Exempt	15E 037	Exempt
15E 016	Exempt	15E 027	Exempt	15E 038	Exempt
15E 017	Exempt	15E 028	Exempt	15E 039	Exempt
15E 018	Exempt	15E 029	\$ 41,935	15E 040	Exempt
15E 019	Exempt	15E 030	Exempt	15E 041	Exempt
15E 020	Exempt	15E 031	Exempt	15E 042	Exempt
15E 021	Exempt	15E 032	Exempt	15E 043	Exempt
15E 022	Exempt	15E 033	Exempt	15E 044	Exempt
15E 023	Exempt	15E 034	Exempt	15E 045	Exempt
15E 024	Exempt	15E 035	Exempt	15E 046	Exempt
15E 025	Exempt	15E 036	Exempt		

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2014 and 2015.
8. This Decision and Order is effective for purposes of appeal on July 28, 2017.⁹⁸
9. Signed and Sealed: July 28, 2017

Nancy J. Salmon, Commissioner

SEAL

Robert W. Hotz, Commissioner

⁹⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.