

## **BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Nebraska Corn Processing, LLC,  
Appellant,

v.

Furnas County Board of Equalization,  
Appellee,

Case Nos. 10C-176, 10C-177, 10P-004,  
& 10P-005

Decision and Order Reversing the  
Determinations of the Furnas County Board  
of Equalization

**For the Appellant:**

Frederick Stehlik and David C. Nelson,  
Gross & Welch PC, LLO

**For the Appellee:**

Thomas Patterson,  
Furnas County Attorney

These appeals were heard before Commissioners Robert W. Hotz, Nancy J. Salmon, and Thomas D. Freimuth.

### **I. THE SUBJECT PROPERTY**

The Subject Property includes a 24.33 acre commercial parcel that is improved with an Ethanol Plant, and an adjacent 78 acre commercial parcel that contains a lagoon. The Subject Property also includes personal property. The Subject Property is located in Furnas County, Nebraska. The legal descriptions of the Subject Property are found at Exhibits 3:1 and 3:2 respectively in 10C-176 and 10C-177, and at Exhibits 1:1 and 2:1 respectively in 10P-004 and 10P-005.

### **II. PROCEDURAL HISTORY**

The Furnas County Assessor (Assessor) determined that the assessed value of the Subject Property in Case No. 10C-176 was \$16,837,195 for tax year 2010.<sup>1</sup> Nebraska Corn Processing, LLC (NCP) protested this assessment to the Furnas County Board of Equalization (County

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<sup>1</sup> E3:1. The Assessor valued the land at \$145,305 and the improvement at \$16,691,890.

Board) and requested an assessed valuation of \$1,831,055.<sup>2</sup> The County Board determined that the taxable value for tax year 2010 was \$15,490,220.<sup>3</sup>

The Assessor determined that the assessed value of the Subject Property in Case No. 10C-177 was \$610,040 for tax year 2010.<sup>4</sup> NCP protested this assessment to the County Board and requested an assessed valuation of \$170,040.<sup>5</sup> The County Board determined that the taxable value for tax year 2010 was \$610,040.<sup>6</sup>

In Case No. 10P-004, the Assessor determined that the assessed value of the Personal Property was \$19,491,533 for tax year 2010.<sup>7</sup> NCP protested this assessment to the County Board and requested an assessed valuation of \$13,162,361.<sup>8</sup> The parties stipulated that certain items of real property were assessed both as real property and as personal property.<sup>9</sup> In Case No. 10P-004, the parties stipulated to a personal property net book value of \$16,159,967.<sup>10</sup>

The Assessor determined that the assessed value of the Subject Property in Case No. 10P-005 was \$12,513,267 for tax year 2010.<sup>11</sup> NCP protested this assessment to the County Board and requested an assessed valuation of \$8,450,035.<sup>12</sup> The parties stipulated that certain items of real property were assessed both as real property and as personal property.<sup>13</sup> In Case No. 10P-005, the parties stipulated to a personal property net book value of \$10,557,618.<sup>14</sup>

NCP appealed the Decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of all exchanged exhibits. The parties also stipulated that certain items owned by NCP had been double-taxed as both real property and as personal property.<sup>15</sup> NCP did not dispute the

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<sup>2</sup> E3:1. The Taxpayer requested a land value of \$145,305 and an improvement value of \$1,685,750.

<sup>3</sup> E3:1. The County Board determined the contribution to value of the land to be \$145,305 and the improvement value to be \$15,344,915.

<sup>4</sup> E2:1. The Assessor valued the land at \$170,040 and the improvement at \$440,000.

<sup>5</sup> E2:1. The Taxpayer requested a land value of \$170,040 and an improvement value of \$0.

<sup>6</sup> E2:1. The County Board determined the contribution to value of the land to be \$170,040 and the improvement value to be \$440,000.

<sup>7</sup> E1:1.

<sup>8</sup> E1:1.

<sup>9</sup> The Case File contains the Stipulation between the parties.

<sup>10</sup> See E3:7-18, including Nebraska Personal Property Return and Nebraska Net Book Value Personal Property Schedule.

<sup>11</sup> E1:1.

<sup>12</sup> E1:1.

<sup>13</sup> The Case File contains the Stipulation between the parties.

<sup>14</sup> See E3:19-22, including Nebraska Personal Property Return and Nebraska Net Book Value Personal Property Schedule.

<sup>15</sup> The Case File contains the Stipulation between the parties. The stipulation included an agreement regarding personal property that the Taxpayer was to be refunded \$260,238.20, from various political subdivisions. See Exhibit 38.

taxable value of the land component of the Subject Properties in either appeal. The Commission held a consolidated hearing on September 14, 2011.

### **III. STANDARD OF REVIEW**

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>16</sup> 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 in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>17</sup>

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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>18</sup>

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.<sup>19</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>20</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>21</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>22</sup>

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<sup>16</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 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).

<sup>17</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>18</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>19</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>20</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>21</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>22</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

#### IV. FEE APPRAISALS

Three appraisal reports were submitted into evidence in these appeals. The County Board offered an appraisal report prepared by Larry Rexroth.<sup>23</sup> Rexroth's report was prepared February 10, 2008,<sup>24</sup> and was retrospective to January 1, 2008,<sup>25</sup> two years prior to the effective date at issue. Rexroth testified that he was a Registered Appraiser<sup>26</sup> at the time he prepared the appraisal report but that his appraisal license had become inactive as of January 1, 2011. His opinion of market value of the Subject Property as stated in his report was \$17,453,185.<sup>27</sup> Because the retrospective appraisal date was two years prior to the effective date, we find that the Rexroth appraisal is limited in its persuasive value.

NCP offered an appraisal report prepared by Joseph J. Calvanico.<sup>28</sup> Calvanico's report was prepared August 17, 2011,<sup>29</sup> and was retrospective to January 1, 2010,<sup>30</sup> the effective date at issue. Calvanico testified that he was a General Certified appraiser<sup>31</sup> at all relevant times. His opinion of actual value of the Subject Property was \$5,500,000.<sup>32</sup>

As a rebuttal exhibit, the County Board offered an appraisal report prepared by Calvanico that NCP had provided to the County Board at the time of the protest proceeding in July 2010.<sup>33</sup> That appraisal report was dated July 19, 2010,<sup>34</sup> and was retrospective to January 1, 2010.<sup>35</sup> In this earlier report, Calvanico stated his opinion of actual value of the Subject Property as \$6,850,000.<sup>36</sup>

The Commission has reviewed all of the evidence received at the hearing. We find that the appraisals offered by NCP were competent evidence<sup>37</sup> to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

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<sup>23</sup> E3:12-46, E4:1-46.

<sup>24</sup> E3:13, E4:2.

<sup>25</sup> E3:15, E4:4.

<sup>26</sup> Rexroth's appraisal credentials are found at E3:35-36.

<sup>27</sup> E3:22.

<sup>28</sup> E31.

<sup>29</sup> E31:1.

<sup>30</sup> E31:4.

<sup>31</sup> Calvanico's appraisal credentials are found at E30:1-2 and E31:8.

<sup>32</sup> E31:57.

<sup>33</sup> E37:2-50.

<sup>34</sup> E37:2.

<sup>35</sup> E37:4.

<sup>36</sup> E37:27.

<sup>37</sup> See *Black's Law Dictionary*. Competent evidence is both admissible and relevant.

determinations.<sup>38</sup> The Commission has largely relied upon the persuasiveness of the Calvanico appraisal, dated August 17, 2011,<sup>39</sup> in reaching its conclusions of actual value of the Subject Property as of January 1, 2010.

## V. VALUATION

### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>40</sup>

"Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."<sup>41</sup> "Actual value, market value, and fair market value mean exactly the same thing."<sup>42</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>43</sup> All real property in [Nebraska] subject to taxation shall be assessed as of January 1.<sup>44</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>45</sup>

### B. Summary of the Evidence

#### 1. Valuation of the Land

The County Board determined the value of the land components of the Subject Property to be \$145,305 (10C-176)<sup>46</sup> and \$170,040 (10C-177).<sup>47</sup> NCP did not dispute the taxable value of

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<sup>38</sup> See, *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 127, --- N.W.2d --- (2013).

<sup>39</sup> E31:1.

<sup>40</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>41</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>42</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>43</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>44</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>45</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>46</sup> E1:1.

<sup>47</sup> E2:1.

the land components in either appeal. The property record card for the Subject Property in Case No. 10C-176 indicates the size of the parcel at 24.33 acres.<sup>48</sup> The size of the parcel in Case No. 10C-177 was 78 acres according to the property record card.<sup>49</sup>

In the Rexroth appraisal, it appears that three tracts of land in addition to the Subject Property were included when determining the value of the land.<sup>50</sup> These three additional tracts had a total size of 44.1 acres.<sup>51</sup> Rexroth valued the entire 146.43 acres at \$319,220.<sup>52</sup> In his “Vacant Land Analysis,” Rexroth opines that “sales support a land value for large industrial at \$0.05 per square foot or \$2,180 per acre.”<sup>53</sup> It would appear that Rexroth arrived at an opinion of value of the land component of the Subject Property by incorrectly applying the \$2,180 per acre to the three tracts in addition to the Subject Property.<sup>54</sup> An application of \$2,180 only to the 102.33 acres of the Subject Property would result in a total land component value of \$223,079.

The Calvanico appraisals also incorrectly included a total of 146.43 acres in the land component of the property appraised.<sup>55</sup> Again, this included 44.1 acres that were not a part of the Subject Property.<sup>56</sup> As a result, both the Rexroth and the Calvanico appraisals included the land component of parcels owned by NCP, but not appealed, within the scope of their respective appraisals, but 44.1 acres that were included in the appraisals were not part of the Subject Property.

The Commission finds that the appropriate and reasonable value of the land component of the Subject Property should be based upon the \$2,180 per acre value used in both the Rexroth and the Calvanico appraisals. However, that amount per acre should only be applied to the 102.33 acres of the Subject Property. Therefore, the Commission finds that the market value of the land component in Case No. 10C-176 is \$53,039 (24.33 acres x \$2,180), and the market value of the land component in Case No. 10C-177 is \$170,040 (78 acres x \$2,180).

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<sup>48</sup> E3:3.

<sup>49</sup> E3:5.

<sup>50</sup> E3:20-22, 28. The Subject Property includes two parcels of 24.33 acres and 78 acres.

<sup>51</sup> E3:20-21. The three tracts included in the Rexroth appraisal report were 41.37 acres, 2.18 acres, and .55 acres.

<sup>52</sup> E3:22, 28.

<sup>53</sup> E3:24.

<sup>54</sup> \$2,180 x 146.43 = \$319,217 (rounded to \$319,220).

<sup>55</sup> E31:3, E37:7.

<sup>56</sup> E31:13-14.

## **2. Valuation of the Improvements**

### **a. Stipulation of the Parties**

The improvements valued by the Assessor and by the County Board as real property are listed in the Rexroth appraisal.<sup>57</sup> NSP argued that some of these items should instead have been classified as trade fixtures and valued as tangible personal property rather than as real property. The disputed items included two bucket elevators,<sup>58</sup> two grain tanks,<sup>59</sup> two truck scales at the main office,<sup>60</sup> and one scale at the grain receiving building.<sup>61</sup> The parties entered into a conditional stipulation on the record regarding the value of each of these items in the event the Commission determined that any of the items are personal property rather than real property.<sup>62</sup>

### **b. Trade Fixtures to be Valued as Personal Property**

Tangible personal property is a distinct class of property that shall be valued at its net book value.<sup>63</sup> The test for determining whether property qualifies as tangible personal property for ad valorem tax purposes is contained in Nebraska Statutes at §77-105.<sup>64</sup>

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased...<sup>65</sup>

In order to determine whether the disputed items are trade fixtures, we first determine that all of the items possessed a physical existence. Second, we find that each of the items was used directly in the commercial activity relating to the ethanol plant at the Subject Property, that is, each item had a necessary function relating to the commercial production of ethanol. We find, however, based upon our review of the evidence, that the scales and the grain tanks fail the test in that neither of them should be classified as machinery or equipment. While both the scales

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<sup>57</sup> E3:26-27.

<sup>58</sup> E3:27, E3:39.

<sup>59</sup> E3:27, E3:39.

<sup>60</sup> E3:27, E3:38.

<sup>61</sup> E3:27, E3:44.

<sup>62</sup> Under the conditional stipulation, the parties agreed to the following values: 2 bucket elevators, \$110,940; 2 grain tanks, \$210,815; 1 truck scale (at the main office), \$85,337 each; and one truck scale (at the grain receiving building), \$52,418.

<sup>63</sup> Neb. Rev. Stat. §77-201(5) (Reissue 2009).

<sup>64</sup> *Vandenberg v. Butler County Board of Equalization*, 796 N.W.2d 580, 584, 281 Neb. 437, 442 (2011). In *Vandenberg*, the Court said, “§ 77-105 clearly controls the issue of classifications of fixtures for taxation purposes. Accordingly, the three-part test does not apply to taxation determinations of this nature. To the extent that *Northern Natural Gas Co.* holds to the contrary, it is expressly overruled.” *Id.*

<sup>65</sup> Neb. Rev. Stat. 77-105 (Reissue 2009).

and the grain tanks may have component parts which could possibly be treated as machinery or equipment, there was no evidence in the record to make such a separation between personal property and real property.

We do find, however, that the bucket elevators were machinery or equipment, should be classified as trade fixtures under the applicable law, and should therefore be taxed as personal property, not as real property. We base this finding on the evidence that the function of the bucket elevators was to transport grain from one portion of the ethanol facility to another, one of the basic functions of a common machine. The evidence demonstrates that the bucket elevators were machinery or equipment used directly in the commercial, manufacturing, or processing activities conducted on the real property.

We find that the remaining items included in the Rexroth appraisal are real property.

#### **c. Buildings to be Valued as Real Property**

The buildings to be valued as real property include the following:

<b>Building</b>	<b>Dimensions</b>	<b>Square Feet</b>	<b>Exhibits</b>
Main Office	35' x 45'	1,575 sq. ft.	E3:26,38, E31:57,66
Grain Receiving	43' x 125'	5,375 sq. ft.	E3:26,39, E31:57,67
Main Processing & Office	125' x 176'	22,000 sq. ft.	E3:26,40, E31:57,68
Main Processing & Office	50' x 50'	2,500 sq. ft.	E3:26,40, E31:57,68
Main Processing & Office	50' x 117'	5,850 sq. ft.	E3:26,41, E31:57,68
Maintenance	40' x 60'	2,400 sq. ft.	E3:26,42, E31:57, E37:45
Fermentation	32' x 140'	4,480 sq. ft.	E3:26,43, E31:57,69
Wet Cake Slab/Wall	120' x 140'	16,800 sq. ft.	E3:26,44, E31:57,70
Electric/Energy	30' x 40'	1,200 sq. ft.	E3:26,46, E31:57,71
Boiler	70' x 75'	5,250 sq. ft.	E3:26,45, E31:57,72

#### **d. Depreciation of the Buildings**

In its determination of value, the County Board relied upon the Rexroth appraisal report, except that the County Board attempted to adjust the value down by 8% for physical depreciation of the buildings.<sup>66</sup> The record of the County Board decision states, “[g]ive buildings 8%

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<sup>66</sup> E1:1.

physical depreciation.”<sup>67</sup> As a result, the County Board determined the value of the improvements to be \$15,344,915.<sup>68</sup>

As noted above, NCP offered two appraisal reports prepared by Joseph J. Calvanico.<sup>69</sup> Both of Calvanico’s reports were retrospective to January 1, 2010.<sup>70</sup> As of that appraisal date, Calvanico determined the improvements of the Subject Property to be three years old and that they had “suffered some accelerated deterioration resulting from the high volume of corn dust” and its “abrasive effects.”<sup>71</sup> Because of this, Calvanico estimated the effective age of the improvements at five years.<sup>72</sup> He therefore estimated physical depreciation at 10%.<sup>73</sup>

Depreciation is “a loss in property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date.”<sup>74</sup> After reviewing the evidence, we find that Calvanico’s physical depreciation estimate of 10% is reasonable.

Calvanico also gave the opinion that the Subject Property suffered from functional obsolescence. He based this opinion on the fact that the Subject Property was built according to a Delta-T design rather than a newer, “technologically superior ICM design.”<sup>75</sup> Because of this design inferiority, Calvanico estimated a 20% deduction for functional obsolescence.<sup>76</sup>

Functional obsolescence is defined as “[a]n element of depreciation resulting from deficiencies or superadequacies in the structure.”<sup>77</sup>

Functional utility is the overall usefulness and desirability of a property. The ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market. Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can be curable or incurable.

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<sup>67</sup> E1:1.

<sup>68</sup> This value appears to be either miscalculated or misstated. The building improvements total in the Rexroth appraisal, at Exhibit 3, page 28, is \$16,693,965. An 8% reduction would result in a value of \$15,358,448, not \$15,344,915. Similarly, the protested assessed value of the building improvements is shown on Exhibit 1, page 1, as \$16,691,890. An 8% reduction in this amount would result in a value of \$15,356,539, not \$15,344,915. Since our findings and conclusions are not based on either of these values, or on the County Board’s 8% depreciation determination, these miscalculations or misstatements are not critical in our decision.

<sup>69</sup> E31, E37:2-50.

<sup>70</sup> E31:4, E37:4.

<sup>71</sup> E31:56.

<sup>72</sup> E31:56.

<sup>73</sup> E31:56.

<sup>74</sup> The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at pp. 79-80.

<sup>75</sup> E31:56.

<sup>76</sup> E31:56.

<sup>77</sup> The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 122.

Functional obsolescence exists when a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on. It is the inability of a structure to perform adequately the function for which it is currently used.<sup>78</sup>

Implicit in Calvanico's opinion is that since the Subject Property had been constructed according to an inferior Delta-T design it suffered from a "lack of modern equipment" and had the inability to perform adequately the function for which it was used on the effective date. We find that since the Subject Property was built approximately three years prior to the effective date it did not lack "modern equipment," nor did it suffer from the inability to perform adequately the function for which it was used on the effective date. We reject the assertion that the Subject Property suffered from functional obsolescence on the effective date.

Finally, Calvanico gave the opinion that the Subject Property also suffered from 25% economic obsolescence:

Based on industry data we have calculated an economic obsolescence penalty of 25 percent to reflect the economics of the industry. An overbuilding, or oversupply, of Ethanol Plants over 2008-2009, is causing profit margins in 2009 to substantially decrease, and economic profit (which attracts new entrants into the industry) is also being substantially minimized. Declining profitability within the industry is causing for consolidation [sic], as well as causing some players to exit the industry all together [sic]. It is difficult for demand to meet this oversupply of production capacity. Due to the foregoing factors, it is our opinion that a lack of economic stability is evident.<sup>79</sup>

Economic obsolescence has the same meaning as external obsolescence.<sup>80</sup> External obsolescence is defined as "[a]n element of depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the owner, landlord, or tenant."<sup>81</sup> We find Calvanico's opinions as expressed above are reasonable, and that the Subject Property was experiencing 25% economic obsolescence on the effective date.

The Commission finds, therefore, that as of the effective date of January 1, 2010, the buildings at the Subject Property should receive depreciation deductions of 10% for physical depreciation and 25% for economic obsolescence, but should not receive any depreciation deduction for functional obsolescence.

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<sup>78</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010), at pp. 260-61.

<sup>79</sup> E31:56.

<sup>80</sup> The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 92.

<sup>81</sup> The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, (2002) at p. 106.

### e. Valuation of the Buildings

Upon a review of the evidence, an analysis of the applicable Marshall Valuation Services costing factors, and corrections to errors in the respective appraisal reports, the Commission finds as follows:

<b>Building</b>	<b>Actual Value</b>
Main Office	\$ 79,565 <sup>82</sup>
Grain Receiving	\$ 195,496 <sup>83</sup>
Main Processing & Office	\$3,437,183 <sup>84</sup>
Maintenance	\$ 63,683 <sup>85</sup>
Fermentation	\$ 531,770 <sup>86</sup>
Wet Cake Slab/Wall (non-building)	\$ 130,783 <sup>87</sup>
Electric/Energy	\$ 32,432 <sup>88</sup>
Boiler	\$ 209,330 <sup>89</sup>
Total	\$4,680,242

<sup>82</sup> \$55.15 + \$13.05 = \$68.20 (square foot cost). \$68.20 x 1.15583 (total height/size multiplier) = \$78.83 (cost per square foot) (multiplied in error at E31:66). \$78.83 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$74.84 (square foot cost)(in error at E31:66). \$74.84 x 1,575 (square feet) = \$117,873 (replacement cost new). \$117,873 – 10% (physical depreciation) = \$106,086. \$106,086 – 25% (economic obsolescence) = \$79,565.

<sup>83</sup> \$37.92(square foot cost). \$37.92 x 1.49671 (total height/size multiplier) = \$56.76 (cost per square foot) (E31:67). \$56.76 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$53.88 (square foot cost)(E31:66). \$53.88 x 5,375 (square feet) = \$289,623 (replacement cost new). \$289,623 – 10% (physical depreciation) = \$260,661. \$260,661 – 25% (economic obsolescence) = \$195,496.

<sup>84</sup> \$120.69 + (24% x \$24.83) = \$126.65 (square foot cost). \$126.65 x 1.395315 (total height/size multiplier) = \$176.72 (cost per square foot) (multiplied in error at E31:68). \$176.72 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$167.78 (square foot cost) (in error at E31:68). \$167.78 x 30,350 (square feet) = \$5,092,123 (replacement cost new). \$5,092,123 – 10% (physical depreciation) = \$4,582,910. \$4,582,910 – 25% (economic obsolescence) = \$3,437,183.

<sup>85</sup> \$34.05 (square foot cost) x 1.041 (height multiplier) x 1.168 (perimeter multiplier) = \$41.40 (cost per square foot) (corrected at E37:45). \$41.40 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$39.31 (square foot cost). \$39.31 x 2,400 (square feet) = \$94,344 (replacement cost new). \$94,344 – 10% (physical depreciation) = \$84,910. \$84,910 – 25% (economic obsolescence) = \$63,683.

<sup>86</sup> \$120.69 (square foot cost) x 1.534695 (total height/size multiplier) = \$185.22 (cost per square foot) (E31:69). \$185.22 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$175.85 (square foot cost)(E31:69). \$175.85 x 4,480 (square feet) = \$787,808 (replacement cost new). \$787,808 – 10% (physical depreciation) = \$709,027. \$709,027 – 25% (economic obsolescence) = \$531,770.

<sup>87</sup> \$7 (base cost concrete slab) x 1.01 (current cost multiplier) x .94 (local multiplier) = \$6.65 (cost slab per square foot) (E31:70). \$36 (base cost wall) x 1.01 (current cost multiplier) x .94 (local multiplier) = \$34.18 (cost wall per square foot). \$6.65 x 16,800 (square feet slab) = \$111,720 (replacement cost new slab). \$34.18 x 2,400 (square feet wall) = \$82,032 (replacement cost new wall). \$111,720 + \$82,032 = \$193,752. \$193,752 – 10% (physical depreciation) = \$174,377. \$174,377 – 25% (economic obsolescence) = \$130,783.

<sup>88</sup> \$37.92 (square foot cost) x 1.112 (total height/size multiplier) = \$42.17 (cost per square foot) E31:71). \$42.17 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$40.04 (square foot cost)(corrected at E31:71). \$40.04 x 1,200 (square feet) = \$48,048 (replacement cost new). \$48,048 – 10% (physical depreciation) = \$43,243. \$43,243 – 25% (economic obsolescence) = \$32,432.

<sup>89</sup> \$37.92 (square foot cost) x 1.515 (height multiplier) x 1.083 (corrected perimeter multiplier at E31:72) = \$62.22 (cost per square foot) (corrected at E31:72). \$62.22 x 1.01 (current cost multiplier) x .94 (local multiplier) = \$59.07 (square foot cost)(in error at E31:72). \$59.07 x 5,250 (square feet) = \$310,118 (replacement cost new). \$310,118 – 10% (physical depreciation) = \$279,106. \$279,106 – 25% (economic obsolescence) = \$209,330.

### f. Valuation of Other Improvements

Unless indicated otherwise, the value of each improvement is derived from the Calvanico appraisal. In some instances, the Calvanico appraisal excluded items which were included in the Rexroth appraisal. In those instances, the values relied upon by the County Board were used.

The Commission finds, therefore, that the following values are reasonable:

<b>Improvements<sup>90</sup> 10C-176</b>	<b>Actual Value</b>
Concrete Drives & Parking	\$ 500,000
Railroad Scale	\$ 50,000
Railroad Spurs	\$ 500,000
Railroad Load out (Ethanol)	\$ 75,000
Truck Load out (Ethanol)	\$ 75,000
Ethanol Storage Tanks (2) (541,000 gallons each)	\$ 540,000
Day Tanks (2) (155,747 gallons each)	\$ 255,740
Denaturant Tank (91,000 gallons)	\$ 45,430
Clear Water Tank (587,000 gallons)	\$ 281,500
Water Wells (Leasehold Interest)	\$ 80,000 <sup>91</sup>
Truck Scales (2) (at Main Office)	\$ 170,000 <sup>92</sup>
Truck Scale (at Distillers Grain Building)	\$ 85,000 <sup>93</sup>
Grain Tanks	\$ 460,000 <sup>94</sup>
Site Preparation	\$ 500,000 <sup>95</sup>
Total	\$3,617,670

<b>Improvements<sup>96</sup> 10C-177</b>	<b>Actual Value</b>
Lagoon (with Liner)	\$100,000
Total	\$100,000

<sup>90</sup> E3:27, E31:57.

<sup>91</sup> The Calvanico appraisal did not appraise an improvement value for the Water Wells. The County Board, relying upon the Rexroth appraisal, valued the Water Wells at \$80,000. E3:27. According to Exhibit 1:1, the County Board applied an 8% physical depreciation deduction to buildings. Since the Water Wells are not buildings, the Commission does not apply the 8% deduction to their value.

<sup>92</sup> The Calvanico appraisal did not appraise an improvement value for the Truck Scales. The County Board, relying upon the Rexroth appraisal, valued the Truck Scales at \$170,000. E3:27. According to Exhibit 1:1, the County Board applied an 8% physical depreciation deduction to buildings. Since the Truck Scales are not buildings, the Commission does not apply the 8% deduction to their value.

<sup>93</sup> The Calvanico appraisal did not appraise an improvement value for this Truck Scale. The County Board, relying upon the Rexroth appraisal, valued this Truck Scale at \$85,000. E3:27. According to Exhibit 1:1, the County Board applied an 8% physical depreciation deduction to buildings. Since this Truck Scale is not a building, the Commission does not apply the 8% deduction to its value.

<sup>94</sup> The Calvanico appraisal did not appraise an improvement value for the Grain Tanks. The County Board effectively valued the Grain Tanks at \$460,000, from E:3:27, minus an 8 percent depreciation deduction ( $\$500,000 \times .92 = \$460,000$ ).

<sup>95</sup> The Calvanico appraisal did not appraise an improvement value for Site Preparation. The County Board, relying upon the Rexroth appraisal, valued Site Preparation at \$500,000. E3:27. According to Exhibit 1:1, the County Board applied an 8% physical depreciation deduction to buildings. Since the Site Preparation was not a building, the Commission does not apply the 8% deduction to its value.

<sup>96</sup> E3:27, E31:57.

### **g. Personal Property**

As noted above, the parties stipulated that certain items owned by NCP had been double-taxed as both real property and as personal property.<sup>97</sup> In each appeal, the parties relied upon a Nebraska Personal Property Return and a Nebraska Net Book Value Personal Property Schedule.<sup>98</sup> The Commission finds that these values are reasonable. The value of each item of personal property is not disputed. Since we found above that the bucket elevators were trade fixtures to be valued as personal property, we add their value, as stipulated by the parties, of \$110,940, to the value of the personal property.

## **VI. CONCLUSION**

The Commission finds that the Taxpayer has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that the Taxpayer has provided clear and convincing evidence that the determinations of value by the County Board were arbitrary or unreasonable.

For all of the reasons set forth above, the determinations by the County Board are vacated and reversed.

## **VII. ORDER**

**IT IS ORDERED THAT:**

1. The Decisions of the Furnas County Board of Equalization determining the values of the Subject Property for tax year 2010 are reversed.<sup>99</sup>
2. The taxable values of the Subject Property for tax year 2010 are as follows:

10C-176

Land	\$ 53,039
Buildings	\$4,680,242
<u>Other Improvements</u>	<u>\$3,617,670</u>
Total	\$8,350,951

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<sup>97</sup> As noted above, the Case File contains the Stipulation between the parties. The stipulation included an agreement regarding personal property that the Taxpayer was to be refunded \$260,238.20, from various political subdivisions. See Exhibit 38.

<sup>98</sup> E3:7-22.

<sup>99</sup> Assessed value, as determined by the County Board, was based upon the evidence at the time of the protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the protest proceeding.

10C-177

Land	\$ 170,040
<u>Improvements</u>	<u>\$ 100,000</u>
Total	\$ 270,040

10P-004

Personal Property	\$16,159,967
<u>Bucket Elevator System</u>	<u>\$ 110,940</u>
Total	\$16,270,907

10P-005

<u>Personal Property</u>	<u>\$10,557,618</u>
Total	\$10,557,618

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Furnas County Treasurer and the Furnas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2010.
7. This Decision and Order is effective for purposes of appeal on September 16, 2013.

Signed and Sealed: September 16, 2013.

SEAL

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner

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Thomas D. Freimuth, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.