

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

Duane L. Dean,  
Appellant,

v.

Pierce County Board of Equalization,  
Appellee.

Case No: 13A 020

Decision and Order Affirming Pierce  
County Board of Equalization

**For the Appellant:**

Duane L. Dean,  
Pro Se.

**For the Appellee:**

Verlyn Luebbe,  
Pierce County Attorney.

The appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is an unimproved 32.81 acre agricultural parcel located in Pierce County, Nebraska. The legal description of the Subject Property is found at Exhibit 2, page 9. The Property Record File for the Subject Property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Pierce County Assessor determined that the assessed value of the Subject Property was \$35,815 for tax year 2013. Duane L. Dean (herein referred to as the “Taxpayer”) protested this assessment to the Pierce County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$39,230. The County Board determined that the assessed value for tax year 2013 was \$35,815.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. The Commission held a hearing on October 23, 2014.

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<sup>1</sup> E1.

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</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>3</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>4</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>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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>7</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>8</sup>

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. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

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<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 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>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>9</sup> 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 it.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

#### IV. 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>12</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>13</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>14</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>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).  
Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and

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<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>14</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>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>18</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>19</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>20</sup>

A parcel is primarily used for agricultural purposes when it is mainly used for agricultural and horticultural purposes.<sup>21</sup> Nebraska Statutes section 1359(2) defines the term “agricultural and horticultural purposes” as follows: “[U]sed for the commercial production of any plant or animal produce in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.”<sup>22</sup>

Nebraska Statutes section 77-1363 prescribes the basis for the assessment of agricultural and horticultural land:

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax

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<sup>18</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>21</sup> 350 Neb. Admin. Code, ch. 14 §002.56 (03/09).

<sup>22</sup> Neb. Rev. Stat. §77-1359 (2) (Cum. Supp. 2014).

Equalization and Review Commission to achieve more uniform and proportionate valuations.<sup>23</sup>

Nebraska Statutes section 77-103.01, which is referenced in Nebraska Statutes section 77-1363 cited above, defines the term “class or subclass” as follows:

Class or subclass of real property means a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass.<sup>24</sup>

The government official known as the “Property Tax Administrator” referenced above in Nebraska Statutes section 77-1363 is the chief administrative officer of the Nebraska Department of Revenue’s Property Assessment Division (herein sometimes referred to as “PAD”).<sup>25</sup> PAD has issued regulations regarding the classification of agricultural and horticultural land for assessment purposes that supplement the above-noted Nebraska Statutes sections 77-1363 and 77-103.01.<sup>26</sup>

Consistent with Nebraska Statutes section 77-1363, PAD’s regulations require county assessors to inventory and categorize each acre of each parcel of agricultural and horticultural land based on “use” and “soil type.”<sup>27</sup> The county assessor is then required to use a “soil conversion legend” created by PAD to assign each acre of agricultural and horticultural land to a Land Capability Group (herein referred to as “LCG”).<sup>28</sup>

PAD’s regulations provide for the following land “use” classes, which are used by county assessors to inventory acres of agricultural and horticultural land: (1) irrigated cropland; (2) dryland cropland; (3) grassland; (4) wasteland; (5) government programs land (Conservation

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<sup>23</sup> See, Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014).

<sup>24</sup> Neb. Rev. Stat. §77-103.01 (Reissue 2009).

<sup>25</sup> Neb. Rev. Stat. §77-701(1) (Cum. Supp. 2014).

<sup>26</sup> 350 Neb. Admin. Code, ch. 14 (3/09).

<sup>27</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp. ), 350 Neb. Admin. Code, ch. 14, §§004.04, 004.06, 004.06B, 004.06D, 004.07D, 004.08A – 004.08H (3/09).

<sup>28</sup> See, 350 Neb. Admin. Code, ch. 14, §§004.06C, 004.07E, 004.07E, 004.08A – B, 004.08E (3/09). It is the Commission’s understanding that the “soil conversion legend” referenced in PAD’s regulations correlates LCG categories with four-digit soil-type codes determined by the U.S. Department of Agriculture’s Natural Resource Conservation Service (herein sometimes referred to as “NRCS”).

Reserve Program, Conservation Reserve Enhancement Program, Environmental Quality Incentives Program, Stewardship Incentive Program, Tree Assistance Program, Water Bank Program); (6) intensive use areas; and (7) forestland and shelterbelt areas.<sup>29</sup>

As indicated previously, in addition to land use categorization, county assessors are required to inventory each acre of agricultural land based on soil type. Consistent with Nebraska Statutes section 77-1363, PAD's regulations recognize the soil classification system developed by the Natural Resource Conservation Service (herein sometimes referred to as "NRCS") for this purpose.<sup>30</sup>

After categorizing each acre of each parcel of agricultural and horticultural land based on land use and NRCS soil type, the county assessor is then required to use a "soil conversion legend" created by PAD to assign each acre of agricultural and horticultural land to a Land Capability Group (herein referred to as "LCG").<sup>31</sup> LCGs are defined as follows under PAD's regulations:

[G]roups of soils that are similar in their productivity and their suitability for most kinds of farming. It is a classification based on the capability classification, production, and limitations of the soils, the risk of damage when they are used for ordinary field crops, grassland, and woodlands, and the way they respond to treatment. Land Capability Groups are determined by the Department of Revenue, Property Assessment Division based upon the dryland capability classification.<sup>32</sup>

PAD's regulations recognize the soil suitability system developed by the NRCS for purposes of assigning agricultural and horticultural land to an appropriate LCG.<sup>33</sup> In this regard, the regulations state as follows: "Land Capability Classification is a system for showing the

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<sup>29</sup> 350 Neb. Admin. Code, ch. 14, §004.04A – 004.04G (3/09).

<sup>30</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§002.40, 004.08E (3/09). See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska's 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

<sup>31</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§004.06C, 004.07E, 004.07E, 004.08A – B, 004.08E (3/09). PAD's regulations indicate the "soil conversion legend" correlates LCG categories with four-digit soil-type codes determined by the U.S. Department of Agriculture's Natural Resource Conservation Service (herein sometimes referred to as "NRCS"). Prior to the repeal of Nebraska Statutes sections 77-1361 and 77-1362 in 2006, the Property Tax Administrator ("PTA") published this "soil conversion legend" in an agricultural land valuation manual prescribed by statute. Because the repeal of Nebraska Statutes sections 77-1361 and 77-1362 in 2006 removed the requirement to publish an agricultural land valuation manual, the PTA no longer publishes PAD's "soil conversion legend" provided to county assessors to correlate NRCS four-digit soil types with LCGs based on land use.

<sup>32</sup> 350 Neb. Admin. Code, ch. 14, §002.41 (3/09).

<sup>33</sup> See, 350 Neb. Admin. Code, ch. 14, §002.40 (3/09); See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska's 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

suitability of soils for most kinds of crops. These are determined by Natural Resources Conservation and Service."<sup>34</sup>

PAD's regulations further state as follows regarding the use of the soil suitability system developed by the NRCS for purposes of assigning agricultural land to an appropriate LCG:

A Land Capability Group (LCG) is a grouping of various soils according to their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management. Since the soil conservation service maps major natural bodies of soil in a mapping area, the criteria used for grouping the soils do not include major land reformation that would change slope, depth or other characteristics of the soils, nor do they include unlikely major reclamation projects. When such areas have been mapped and assigned capability units by the Natural Resources Conservation Service, the assigned capability unit is used. A LCG is determined for each kind of soil and its current land use. Nebraska has three primary land uses. The eastern part of the state is principally a dryland farming area. The central and western regions of the state generally require irrigation for the intensive production of common cultivated crops. Approximately one-half of the acreage in the state is in native grassland. Scattered throughout, there is recreational land, timberland and wasteland.<sup>35</sup>

In an effort to promote the "fair and uniform" assessment of agricultural and horticultural land, the regulations provide LCG definitions and guidelines regarding the development of the soil conversion legend provided by PAD to county assessors to correlate NRCS four-digit soil types with LCGs based on land use.<sup>36</sup> PAD's regulations designate the following four principal LCGs under the grassland class of agricultural and horticultural property: 1G, 2G, 3G, and 4G.<sup>37</sup> PAD's regulations also permit county assessors to "create" additional LCG sub-classifications if needed "to achieve uniform and proportionate valuation."<sup>38</sup>

## **B. Evidence Summary**

Duane Dean, the Taxpayer, testified at the hearing before the Commission. The Taxpayer testified that he owns several parcels of agricultural land in Pierce County, and that he served as the Pierce County Assessor for several years through approximately 2008. The Taxpayer asserts that the County Assessor's classification of 31.01 acres of the Subject Property as 3G grassland

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<sup>34</sup> 350 Neb. Admin. Code, ch. 14, §002.40 (3/09). See also, 442 Neb. Admin. Code, ch. 5, §031.02 (6/11) (the Commission is allowed to take judicial notice of soil surveys for Nebraska's 93 counties published by the NRCS, which is a subdivision of the United States Department of Agriculture).

<sup>35</sup> 350 Neb. Admin. Code, ch. 14, §004.08E (3/09).

<sup>36</sup> 350 Neb. Admin. Code, ch. 14, §004.08A-H (3/09).

<sup>37</sup> 350 Neb. Admin. Code, ch. 14 §004.08G (03/09).

<sup>38</sup> 350 Neb. Admin. Code, ch. 14, §004.09 (3/09).

valued at \$1,155 per acre for tax year 2013 is incorrect, and that these acres should be classified as 2G grassland valued at \$1,265 per acre.<sup>39</sup>

The Taxpayer submitted testimony and exhibit evidence received by the Commission to demonstrate that the Subject Property's 3G grassland acres should be classified and valued as 2G grassland. The Taxpayer's evidence in this regard includes the following in pertinent part: (1) a 1975 soil map of Pierce County published by the United States Department of Agriculture's Natural Resources Conservation Service (herein referred to as the "NRCS") that depicts areas of uplands and bottomlands;<sup>40</sup> (2) Property Record File ("PRF") for the Subject Property, which he referred to in testimony as bottomland or sub-irrigated land based on its NRCS 6336 soil type classification and its relatively high water table;<sup>41</sup> (3) PRFs for three parcels owned by the Taxpayer that he referred to in testimony as upland due to its high concentration of NRCS 6703 soil type and its relatively low water table;<sup>42</sup> (4) three photographs of the Subject Property depicting bountiful grass and hay production;<sup>43</sup> (5) two photographs depicting grass and hay production on approximately 14 acres of the Taxpayer's upland;<sup>44</sup> and (6) calculations comparing the Subject Property and other bottomland in the County with the Taxpayer's upland in terms of hay production and cow/calf capability.<sup>45</sup> The Commission also received in evidence the year 2000 PRF of a sale parcel that the Taxpayer asserts is comparable to the Subject Property in terms of bottomland characteristics, and which supported his higher valuation of bottomland grassland in comparison to upland when he served as the County Assessor prior to 2008.<sup>46</sup>

The Taxpayer's testimony and documentation indicate that bottomland classified as NRCS soil types 6329 and 6336 and valued as 3G grassland for tax year 2013 had previously been

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<sup>39</sup> See, E2:3 (Taxpayer's "Requested Valuation" on Form 422), E2:10 (Property Record File's "Assessment Summary" for tax year 2013), E2:50 (Pierce County Assessor's Office "LCG Table" setting forth assessments for 2G and 3G grassland for tax year 2013). According to the Property Record File's "Assessment Summary" for tax year 2013 found at E2:10 and E3:16, the Subject Property consists of 31.01 acres of 3G grassland (NRCS soil type 6336) and 1.8 acres of classified as "Road" (31.01 + 1.8 = 32.81 acres total).

<sup>40</sup> E3:30. The United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") predecessor was known as the Soil Conservation Service ("SCS"). Consequently, the Taxpayer's 1975 soil map found at E3:30 references the SCS rather than the NRCS.

<sup>41</sup> E3:16 (parcel #700022946).

<sup>42</sup> E3:12 (parcel #700032515); E3:13 (parcel #700032865); E3:14 (parcel #700032879).

<sup>43</sup> E3:19.

<sup>44</sup> E3:21. See, E3:10 (Volwiler parcel – 2013 PRF, which is referenced in the Taxpayer's calculations and which indicates 35.56 acres of NRCS 6336 soil type), E3:4 (Taxpayer's Exhibit Index).

<sup>45</sup> E3:2.

<sup>46</sup> E3:5 (Brandl parcel – 2000 PRF, which indicates the Brandls purchased the parcel in April of 2000 from Kent Friedrich, and which indicates that the parcel includes 119.92 acres of NRCS "Lc" soil type, the predecessor to NRCS 6329 and 6336 soil types according to the soil conversion charts found at E3:22 and E2:37).

classified and valued as 2G grassland prior to tax year 2011.<sup>47</sup> The evidence indicates that this classification change stemmed in part from Nebraska's conversion from the NRCS's alpha-numeric soil classification system to the NRCS's four-digit numeric system for tax years 2011 and beyond.<sup>48</sup>

Peggy Wragge, the Pierce County Assessor, testified on behalf of the County Board. Terry Wragge, a Pierce County Commissioner, also testified on behalf of the County Board.

The County Board submitted PRFs, photographs and aerial maps relating to the Subject Property and the Taxpayer's three upland parcels.<sup>49</sup> The County Board also submitted the PRFs for four of the six grass parcels included on the County Assessor's qualified grassland sales roster.<sup>50</sup>

### **C. Analysis**

The County Assessor classified 31.01 acres of the Subject Property as 3G grassland under NRCS soil type 6336 and valued it at \$1,155 per acre for tax year 2013, and the County Board's final determination relies upon this assessment.<sup>51</sup> The Taxpayer asserts that bottomland is superior to upland for grassland use purposes, and that consequently the Subject Property's bottomland characteristics necessitate assessment as 2G grassland at \$1,265 per acre for tax year 2013.<sup>52</sup> In contrast, the County Board asserts that the soil conversion chart issued by the Nebraska Department of Revenue's Property Assessment Division ("PAD") requires valuation of the Subject Property's 31.01 acres classified as NRCS soil type 6336 as 3G grassland.<sup>53</sup> While the Commission is persuaded that the Subject Property's bottomland is superior to other upland parcels in the County for grassland use purposes, we do not find sufficient evidence of value to reverse the County Board's determination for tax year 2013.

Nebraska Statutes require that properties within a subclass have similar characteristics that are not typically found outside of that subclass.<sup>54</sup> Thus, for purposes of determining the classification of the disputed subclass of 3G grassland areas of real property, Nebraska law requires classification in only one class or subclass. Additionally, Nebraska law requires

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<sup>47</sup> See, E3:1 – E3:3.

<sup>48</sup> See, 2:21; E3:1 – E3:3.

<sup>49</sup> E2:9 – E2:31.

<sup>50</sup> E2:22 – E2:31.

<sup>51</sup> E2:9 – E2:10.

<sup>52</sup> E2:10.

<sup>53</sup> See, E2:21 & E2:37.

<sup>54</sup> See, Neb. Rev. Stat. §77-103.01 (Reissue 2009).

classification of real property based on the identification of its common characteristics deemed “typical” of the subclass.<sup>55</sup>

Nebraska Statutes section 77-1363 and PAD’s regulations require county assessors to categorize each acre of each parcel of agricultural and horticultural land based on land use and NRCS soil type.<sup>56</sup> This statutory and regulatory framework then requires county assessors to utilize a “soil conversion” chart created by PAD to assign each acre of agricultural and horticultural land to a Land Capability Group (“LCG”).<sup>57</sup> PAD’s regulations designate the following four principal LCGs under the grassland class of agricultural and horticultural property: 1G, 2G, 3G, and 4G.<sup>58</sup>

PAD’s soil conversion chart, which converts soil types from the older NRCS alpha numeric system to its updated four-digit numeric system, assigns the Subject Property’s soil type 6336 grassland to LCG 3G.<sup>59</sup> The County Board relied upon the County Assessor’s determination that the Subject Property’s NRCS soil type 6336 acres should be valued under LCG 3G at \$1,155 per acre according to PAD’s soil conversion chart.<sup>60</sup>

The Taxpayer asserts that the Subject Property’s grassland should be valued higher under LCG 2G at \$1,265 per acre because the bottomland characteristics of NRCS soil type 6336 are superior to the upland characteristics of soil type 6703. According to the evidence, however, soil type 6703 is assigned to LCG 3G by PAD’s soil conversion chart and is assessed equally with soil type 6336 by the County at \$1,155 per acre for tax year 2013.<sup>61</sup>

The Commission is persuaded that NRCS soil type 6336 is superior to soil type 6703 for grassland use purposes. The current NRCS Soil Survey states that range production in a normal year for soil type 6336 is 5,400 pounds per acre per year versus 3,073 pounds per acre per year

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<sup>55</sup> See, Neb. Rev. Stat. §77-103.01 (Reissue 2009).

<sup>56</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.), 350 Neb. Admin. Code, ch. 14, §§004.04, 004.06, 004.06B, 004.06D, 004.07D, 004.08A - H (3/09).

<sup>57</sup> See, Neb. Rev. Stat. §77-1363 (2014 Cum. Supp.); 350 Neb. Admin. Code, ch. 14, §§004.06C, 004.07E, 004.07E, 004.08A – B, 004.08E (3/09). It is the Commission’s understanding that the “soil conversion legend” referenced in PAD’s regulations correlates LCG categories with four-digit soil-type codes determined by the U.S. Department of Agriculture’s Natural Resource Conservation Service (herein sometimes referred to as “NRCS”). Prior to the repeal of Nebraska Statutes sections 77-1361 and 77-1362 in 2006, the Property Tax Administrator published this “soil conversion legend” in an agricultural land valuation manual prescribed by statute. Because the repeal of Nebraska Statutes sections 77-1361 and 77-1362 removed the requirement to publish an agricultural land valuation manual, the Property Tax Administrator no longer publishes its “soil conversion legend” used by county assessors to correlate NRCS four-digit soil types with LCGs.

<sup>58</sup> 350 Neb. Admin. Code, ch. 14 §004.08G (03/09).

<sup>59</sup> See, E2:21 & E2:37.

<sup>60</sup> See, E2:21.

<sup>61</sup> See, E2:40 (PAD’s soil conversion chart for soil type 6703); E2:23 (Taxpayer parcel #32515 containing 25 3G acres of soil type 6703); E2:26 (Taxpayer parcel #23879 containing 50.9 acres of soil type 6703); E2:30 (Taxpayer parcel #32865 containing 22.5 3G acres of soil type 6703); E2:70 (PRF for Nuesch parcel containing 1.28 3G acres of soil type 6703).

for soil type 6703.<sup>62</sup> The Taxpayer's photographs and calculations regarding substantially superior hay production and cow/calf capability on the Subject Property and other bottomland parcels in comparison to upland parcels is consistent with this NRCS Soil Survey information. While the County Assessor followed PAD's soil conversion chart in valuing the Subject Property's 6336 bottomland acres under LCG 3G at \$1,155 per acre, PAD's regulations permitted her to value bottomland higher than upland to achieve fair, uniform, and proportionate valuation.<sup>63</sup>

Based on the foregoing, the Commission concludes that there are reasonable alternatives to the County Board's determination. The Taxpayer, who has farming experience and served as Pierce County Assessor for several years through 2008, opined that bottomland such as the Subject Property's NRCS 6336 soil type acres should be valued approximately 10% higher than upland acres for grassland use purposes, and that the County's \$1,265 per acre assessment under LCG 2G is the best evidence for tax year 2013. The Commission acknowledges that soil type 6336 soil generally has a higher production capability as compared to 6703 soil.<sup>64</sup> Thus, it is possible that 6336 soil would command a higher actual value on the open market as compared to 6703 soil.

The evidence, however, does not indicate that the County Assessor's decision to value the soil types identically is not reasonable in itself. The parties agreed that there were no appropriate sales of soil type 6703 used as grassland available to perform a sales comparison approach. Additionally, for grassland use actual value determination purposes, there is incomplete data in evidence to quantify the impact of soil type 6336's superior production capability as compared to soil type 6703, if any. Thus, while the evidence generally supports the Taxpayer's assertions, it also does not contradict the County Assessor's conclusions.

The assessment of real property is not an exact science.<sup>65</sup> It is possible for reasonable minds to come to diverse opinions of the actual value of real property.<sup>66</sup> The burden placed on the Taxpayer is not to show that there are reasonable alternative opinions of value for the Subject Property, but to show by clear and convincing evidence that the County Board's determination

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<sup>62</sup> NRCS Soil Survey, Pierce County, Nebraska, <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (last visited 1/16/2015).

<sup>63</sup> See, 350 Neb. Admin. Code, ch. 14, §§004.08D, 004.09 (3/09).

<sup>64</sup> NRCS Soil Survey, Pierce County, Nebraska, <http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (last visited 1/16/2015).

<sup>65</sup> *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

<sup>66</sup> *Id.*

was unreasonable.<sup>67</sup> Here there are competing reasonable minds, with competing reasonable opinions of value.

Therefore, the Commission finds that sufficient evidence does not exist to increase the Subject Property's soil type 6336 bottomland acres to \$1,265 per acre, and that the County Board's \$1,155 determination should be affirmed.

## V. 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 determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. For all of the reasons set forth above, the appeal of the Taxpayer is denied, and the determination of the County Board is affirmed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Pierce County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.<sup>68</sup>
2. The assessed value of the Subject Property for tax year 2013 is: \$35,815.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Pierce County Treasurer and the Pierce County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2013.

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<sup>67</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

<sup>68</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 of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on January 16, 2015.

Signed and Sealed: January 16, 2015.

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Thomas D. Freimuth, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.