

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Clarence E. Clover & Lois H. Clover Trust,
Lois H. Clover, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 11A 162, 11A 163,
11A 164, 11A 165, 12A 103, 12A 104,
12A 105, 12A 106, 12A 107, & 12A 108

Decision and Order Reversing the
Determinations of the Douglas County
Board of Equalization in Case Nos.
11A 162, 11A 163, 11A 164, 11A 165, 12A
103, 12A 105, 12A 106, 12A 107,
& 12A 108

Decision and Order Affirming the
Determinations of the Douglas County
Board of Equalization in Case Nos.
11A 161 and 12A 104

For the Appellant:

Susan Christopher,
Trustee, Clarence E. Clover &
Lois H. Clover Trust

For the Appellee:

Jimmie Pinkham III,
Deputy Douglas County Attorney

The appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of multiple parcels totaling 486.17 acres located in Douglas County, Nebraska. The legal description of and the property record cards for the parcel of Subject Property in Case Nos. 11A 161 and 12A 104 are found at 2011 Exhibits, Exhibit 6 and 2012 Exhibits, Exhibit 8. The legal description of and the property record cards for the parcel of Subject Property in Case Nos. 11A 162 and 12A 105 are found at 2011 Exhibits, Exhibit 7 and 2012 Exhibits, Exhibit 9. The legal description of and the property record cards for the parcel of Subject Property in Case Nos. 11A 163 and 12A 106 are found at 2011 Exhibits, Exhibit 8 and 2012 Exhibits, Exhibit 10. The legal description of and the property record cards for the parcel of Subject Property in Case Nos. 11A 164 and 12A 103 are found at 2011 Exhibits, Exhibit 9 and 2012 Exhibits, Exhibit 7. The legal description of and the property record cards for the parcel of

Subject Property in Case Nos. 11A 165 and 12A 107 are found at 2011 Exhibits, Exhibit 10 and 2012 Exhibits, Exhibit 11. The legal description of and the property record card for the parcel of Subject Property in Case No. 12A 108 are found at 2012 Exhibits, Exhibit 12.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 11A 161 was \$189,160 for tax year 2011.¹ Clarence E. Clover & Lois H. Clover Trust (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board).² The County Board determined that the assessed value for tax year 2011 was \$189,160.³

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 104 was \$227,380 for tax year 2012.⁴ The Taxpayer protested this assessment to the County Board.⁵ The County Board determined that the taxable value for tax year 2012 was \$227,380.⁶

The County Assessor determined that the assessed value of the Subject Property in Case No. 11A 162 was \$171,520 for tax year 2011.⁷ The Taxpayer protested this assessment to the County Board.⁸ The County Board determined that the taxable value for tax year 2011 was \$171,520.⁹

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 105 was \$207,180 for tax year 2012.¹⁰ The Taxpayer protested this assessment to the County Board.¹¹ The County Board determined that the taxable value for tax year 2012 was \$207,180.¹²

The County Assessor determined that the assessed value of the Subject Property in Case No. 11A 163 was \$184,080 for tax year 2011.¹³ The Taxpayer protested this assessment to the

¹ See, 2011 Exhibits, E1.

² See, *id.*

³ See, *id.*

⁴ See, 2012 Exhibits, E2.

⁵ See, *id.*

⁶ See, *id.*

⁷ See, 2011 Exhibits, E2.

⁸ See, *id.*

⁹ See, *id.*

¹⁰ See, 2012 Exhibits, E3.

¹¹ See, *id.*

¹² See, *id.*

¹³ See, 2011 Exhibits, E3.

County Board.¹⁴ The County Board determined that the taxable value for tax year 2011 was \$184,080.¹⁵

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 106 was \$222,410 for tax year 2012.¹⁶ The Taxpayer protested this assessment to the County Board.¹⁷ The County Board determined that the taxable value for tax year 2012 was \$222,410.¹⁸

The County Assessor determined that the assessed value of the Subject Property in Case No. 11A 164 was \$198,810 for tax year 2011.¹⁹ The Taxpayer protested this assessment to the County Board.²⁰ The County Board determined that the taxable value for tax year 2011 was \$198,810.²¹

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 103 was \$232,990 for tax year 2012.²² The Taxpayer protested this assessment to the County Board.²³ The County Board determined that the taxable value for tax year 2012 was \$232,990.²⁴

The County Assessor determined that the assessed value of the Subject Property in Case No. 11A 165 was \$375,690 for tax year 2011.²⁵ The Taxpayer protested this assessment to the County Board.²⁶ The County Board determined that the taxable value for tax year 2011 was \$344,920.²⁷

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 107 was \$406,060 for tax year 2012.²⁸ The Taxpayer protested this assessment to the County Board.²⁹ The County Board determined that the taxable value for tax year 2012 was \$406,060.³⁰

¹⁴ See, *id.*

¹⁵ See, *id.*

¹⁶ See, 2012 Exhibits, E4.

¹⁷ See, *id.*

¹⁸ See, *id.*

¹⁹ See, 2011 Exhibits, E4.

²⁰ See, *id.*

²¹ See, *id.*

²² See, 2012 Exhibits, E1.

²³ See, *id.*

²⁴ See, *id.*

²⁵ See, 2011 Exhibits, E5.

²⁶ See, *id.*

²⁷ See, *id.*

²⁸ See, 2012 Exhibits, E5.

²⁹ See, *id.*

³⁰ See, *id.*

The County Assessor determined that the assessed value of the Subject Property in Case No. 12A 108 was \$79,980 for tax year 2012.³¹ The Taxpayer protested this assessment to the County Board.³² The County Board determined that the taxable value for tax year 2012 was \$79,980.³³

The Taxpayer 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 Commission held a hearing on March 10, 2015.

III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.³⁴ 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."³⁵

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.³⁶

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.³⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.³⁸

³¹ See, 2012 Exhibits, E6.

³² See, *id.*

³³ See, *id.*

³⁴ 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).

³⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

³⁶ *Id.*

³⁷ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

³⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.³⁹ 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.⁴⁰

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 cross appeal.”⁴¹ 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.”⁴² The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁴³

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.⁴⁴

“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.”⁴⁵ The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”⁴⁶ Taxable value is the

³⁹ 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).

⁴⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁴¹ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁴² Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

⁴³ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁴⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁴⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁴⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.⁴⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁴⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁴⁹

“Agricultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses, shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application of such special valuation is filed and approved pursuant to section 77-1345.”⁵⁰ “Special valuation means the value that the land would have for agricultural and horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”⁵¹ When determining the special value of real property the assessor must use sales of similar properties which are not subject to influences for purposes or uses other than agricultural or horticultural purposes.⁵²

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 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.⁵³

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.⁵⁴

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”⁵⁵

⁴⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁴⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

⁴⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

⁵⁰ Neb. Rev. Stat. §77-1343(1) (Reissue 2009).

⁵¹ Neb. Rev. Stat. §77-1343(5) (Reissue 2009).

⁵² 350 Neb. Admin. Code, ch. 11 §005.02 (03/09).

⁵³ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

⁵⁴ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

⁵⁵ Neb. Rev. Stat. §77-132 (Reissue 2009).

B. Summary of the Evidence

Susan Christopher, Trustee for the Clarence E. Clover & Lois H. Clover Trust, testified that the portions of the Subject Property in Case Nos. 11A 161 through 11A 164 and 12A 103 through 12A 106 are located between the Elkhorn River and the Platte River and are designated by the Natural Resources District (NRD) as being in a floodway. Additionally, she testified that the portion of the Subject Property in Case Nos. 11A 165 and 12A 107 is designated as in a flood plain by the NRD. She testified that the Subject Property is susceptible to flooding and portions of the parcels were in fact flooded in the Spring of 2011 including: (1) 20 acres of that portion of the Subject Property in Case Nos. 11A 161 and 12A 104; (2) 30 acres of that portion of the Subject Property in Case Nos. 11A 162 and 12A 105; (3) 20 acres of that portion of the Subject Property in Case Nos. 11A 163 and 12A 106; and (4) 20 acres of that portion of the Subject Property in Case Nos. 11A 164 and 12A 103. She asserted that the flooding washed away the seeds and resulted in increased costs to replant the fields and lost income because the replanted crops were 45 days behind and produced lower yields.

Christopher attributed the flooding in part to renovations to Dodge Street and above ground culverts that rerouted water released from the City of Valley. She asserted that the Taxpayer had attempted mitigation efforts including filling in creeks, clearing out ditches, and petitioning various governmental bodies for changes.

Christopher was concerned that the comparable properties found in the County Board's Assessment Reports were significantly different from the Subject Property in location, soil composition, and other important characteristics. Christopher believed that the comparable properties found in the Assessment Reports had been used to value the Subject Property. She also asserted that the Subject Property's assessed value had increased too drastically from prior tax years.

Christopher distinguished the Subject Property in Case Nos. 11A 165 and 12A 107 from the other portions of the Subject Property. She asserted that the portion of the Subject Property in Case Nos. 11A 165 and 12A 107 are not amenable to planting row crops. She described this portion of the Subject Property as containing a drainage ditch located around the outside edge and through the middle of the parcel, but she asserted that the ditch could not be used for irrigation. She testified that part of this parcel was used as pasture ground. This parcel also contains a residence. Christopher stated that the residence was built in 1890 and had been

unliveable since 2008. Christopher also asserted that the foundation was bad and that the stairs leading to the basement had been removed. She asserted that the items of deferred maintenance were the same for both tax years. She asserted that the County Assessor inspected the Subject Property in 2011 and decreased the value based upon the condition of the improvements. However, she asserted that the change had not carried over to tax year 2012.

Concerning that portion of the Subject Property in Case No. 12A 108, Christopher testified that the parcel contained some improvements including small sheds. She asserted that the wooden sheds had decayed and that the metal on the sheds was no longer good. Concerning the land, she testified that only 14 acres were suitable for growing crops and that the land was very sandy. She asserted that until 2005 livestock had been kept on a portion of the parcel, which she described as a feedlot. She asserted that the 3.82 acres, where the feedlot had been located, were not suitable for crops, and that attempts to grow crops had failed.⁵⁶ She asserted that the 3.46 acres labeled Grass/Timber at the South end of the parcel and the .98 acres labeled Grass/Timber at the North end of the parcel constitute waste and should not be valued as Grass/Timber.⁵⁷

Stan Mlotek, an agricultural appraiser for the County Assessor, testified that the actual value of agricultural land and horticultural land in Douglas County reflects the value of the land for uses other than agricultural or horticultural purposes and qualifies for special valuation under Nebraska Statutes section 77-1344. He testified that the special valuation was determined by using the State sales file obtained from the Property Tax Administrator (the PTA). He asserted that the a Department of Revenue liaison confirmed to him that all sales included in the State sales file had been verified by the PTA and the assessor of the county where the real property is located, and that sale prices had not been influenced by uses other than uses for agricultural or horticultural purposes.

Mlotek testified that properties listed as comparables in the Assessment Reports had not been used to value the Subject Property, but instead had been included in the Assessment Reports for informational purposes to indicate that the special value assessed to agricultural land and horticultural land in Douglas County was lower than the actual value of the agricultural land and horticultural land.

⁵⁶ See, 2012 Exhibits E12:3 (aerial of 12A 108 with labeled uses).

⁵⁷ See, 2012 Exhibits E12:3 (aerial of 12A 108 with labeled uses).

The Assessment Reports described the method used by the County Assessor for determining the special value of agricultural land or horticultural land in Douglas County for tax year 2011, and state in part:

596 sales were analyzed from Burt, Cass, Dodge, Johnson, Nemaha, Pawnee, Otoe, and Richardson Counties.

Two models were analyzed from the sales data. Both involved utilizing statistical analyses involving arriving at the median sale price per acre with the coefficient of dispersion used to judge the confidence of the results. The first model involved analyzing sales from all the above listed counties with at least 70% predominant use of irrigated cropland, dry cropland and grassland. The second model utilized sales from Burt, Johnson, Nemaha, Pawnee and Richardson Counties. These counties were selected for this analysis due to similarity of location and topography to Douglas County. The sales analyzed had at least 90% predominant use that was utilized.

Both models revealed similar results; in correlating to agricultural coefficients the second model was given greater weight due to the listed unaffected counties being more similar to Douglas County. The analysis also revealed that the soil productivity rating for each sale did not tend to correlate with the sale price. The primary value determinant for the agricultural sales was use and location. Thus an overall rate was selected and used for each of the agricultural use[s].⁵⁸

The Assessment Reports also described the County Assessor's methodology for determining the special value of agricultural land and horticultural land in Douglas County for tax year 2012. The Commission notes that some of the Assessment Reports contain only a partial description:

The county conducted a market analysis for the agricultural land class of property.

Uninfluenced agricultural land sales in the counties of Burt, Otoe, Nemaha, Richardson, and Johnson were analyzed to determine special value for irrigated, dry land, and grass land.⁵⁹

Conversely other Assessment Reports contain greater detail:

542 sales were analyzed from Burt, Cass, Johnson, Otoe, Nemaha, Pawnee, and Richardson Counties. These counties were selected for this analysis due to similarity of location and topography to Douglas County. There were 243 sales that had at least 95% predominant use and 321 with at least 80% predominant use that were utilized.

This analysis revealed an increase to the value that was selected last year; the sales indicated that there was between a 20 to 25% change in the market from last year's sales base. The analysis also revealed that the soil productivity rating for each sale did not tend to correlate with the sale price. To test this analysis Multiple Regression was utilized to arrive at coefficients for each soil type. The primary value determinant for the

⁵⁸ 2011 Exhibits E7:11.

⁵⁹ 2012 Exhibits E8:14.

agricultural sales was use and location. Thus an overall rate was selected and used for each of the agriculture use[s].⁶⁰

Mlotek testified that the sales used for both years included sales from a three year period prior to the effective date, and only used sales of parcels that were 40 acres or larger. Mlotek testified that the special values for both tax years 2011 and 2012 comported with Nebraska Law and were accurate. He asserted that the data indicates that the actual value of agricultural land and horticultural land for agricultural or horticultural purposes had increased over the relevant time period.

C. Analysis

The Taxpayer's arguments present issues in at least three different areas: (1) the actual value of improvements in Case Nos. 11A 165 and 12A 107; (2) the classification of areas of agricultural land and horticultural land; and (3) the special value of agricultural land and horticultural land on the Subject Property. The Commission analyzes these three areas separately and concludes that: (1) the County Board's determinations of the actual value of the improvements in Case Nos. 11A 165 and 12A 107 are not unreasonable or arbitrary; (2) the misclassification of some area of agricultural land and horticultural land in Case No. 12A 108 results in a County Board determination that is unreasonable or arbitrary; and (3) the County Board's determination of the special value of agricultural land and horticultural land is unreasonable or arbitrary. The Commission's reasoning and analysis follows.

1. Value of Improvements

Christopher asserted that the County Assessor, following an inspection, had determined that the assessed value of the improvement in Case Nos. 11A 165 and 12A 107 should be reduced, but that the County Assessor's determination had not been applied to tax year 2012. The Assessment Reports indicate that the County Assessor inspected the residence in 11A 165 and 12A 107 on April 6, 2011, and determined that the value of the residence should be decreased to \$32,330.⁶¹ The assessed value of this improvement was \$63,100 in tax year 2011.⁶² The County

⁶⁰ 2012 Exhibits E9:13.

⁶¹ See, 2011 Exhibits E10:9.

⁶² See, 2011 Exhibits E5.

Board lowered the value of these improvements to \$32,330 for tax year 2011.⁶³ For tax year 2012, the County Assessor assessed the improvements at \$32,330 and the County Board affirmed that valuation.⁶⁴

The Commission finds that the County Board's determination of value of the improvements was appropriately applied to both tax year 2011 and 2012.

2. Classification of Real Property

Christopher asserted that portions of the parcel in Case No. 12A 108 were incorrectly classified as Grass/Timber and should instead be classified as Wasteland. An aerial photograph of the parcel is located in the 2012 Exhibits, Exhibit 12, page 3. The aerial photograph illustrates a narrow strip of .98 acres labelled Grass/Timber lying adjacent to 5.00 acres of OBY and 3.82 acres of Grass. The aerial photograph further depicts 3.46 acres of Grass/Timber to the south of the 3.82 acres of Grass and adjacent to 13.69 acres of Dry. Christopher testified that failed attempts had demonstrated that the 3.46 acres of Grass/Timber were not amenable to row crop production. She also testified that the 3.82 acres were previously used as a feedlot and that livestock could graze this portion of the Subject Property.

Wasteland has a specific definition in Nebraska law:

Wasteland includes land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland.⁶⁵

Christopher testified that the current acres classified as Grass/Timber could not be economically used in their current state, and that development for row crops on a large portion had failed. Concerning the .98 acres of Grass/Timber, the Commission finds that it meets the definition of Wasteland. Christopher testified that there this no economical use for the land, and

⁶³ See, *id.*

⁶⁴ See, 2012 Exhibits E5.

⁶⁵ Title 350, Neb. Admin. Code, ch. 14, §002.54. Rev. 3/15/09.

there was no contradictory evidence offered. The Commission notes that there is no evidence indicating the soil classes for the .98 acres. However, the County Assessor assessed all Grass/Timber at \$750 per square foot. The Commission finds that there is sufficient evidence to change the taxable value of this portion of the parcel based on the reclassification of the .98 acres.

However, concerning the 3.46 acres of Grass/Timber, the Commission finds that the land could economically be used to graze livestock and is not Wasteland.

3. Special Value of Agricultural Land and Horticultural Land

The County Assessor determined that all sales of agricultural land in Douglas County for tax years 2011 and 2012 were affected by the value of the properties for uses other than for agricultural or horticultural uses.⁶⁶ Therefore, the County Assessor determined the agricultural property in Douglas County should receive special valuation under Nebraska law. Nebraska law defines special valuation as “the value land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.”⁶⁷ If real property qualifies for special valuation, the assessor is required to assess the real property at its special value, instead of its actual value.⁶⁸ It is undisputed that the Subject Property in the above captioned appeals was agricultural land and horticultural land which was qualified for special valuation.

The County Assessor valued the Subject Property at its special valuation using a methodology as contained in the Assessment Reports.⁶⁹ In both tax years, the County Assessor obtained sales data from sales of agricultural parcels located in other counties.⁷⁰ In 2011, the County Assessor ran two models based on the sales data: (1) a model consisting of sales of “at least 70% predominant use of irrigated cropland, dry cropland and grassland” from Burt, Cass, Dodge, Johnson, Nemaha, Pawnee, Otoe, and Richardson Counties; and (2) a model consisting of sales of “at least 90% predominant use” from only Burt, Johnson, Nemaha, Pawnee, and Richardson Counties.⁷¹ The County Assessor gave greater weight to the results of the second

⁶⁶ See, 2011 Exhibits E6:12; E7:11; and E8:13; See also, 2012 Exhibits E8:14; E9:14; and E10:13.

⁶⁷ Neb. Rev. Stat. §77-1343(5) (Reissue 2009).

⁶⁸ See, Neb. Rev. Stat. §77-1344(1) (Reissue 2009).

⁶⁹ See, 2011 Exhibits E6:12; E7:11; and E8:13; See also, 2012 Exhibits E8:14; E9:14; and E10:13.

⁷⁰ See, 2011 Exhibits E6:12; E7:11; and E8:13; See also, 2012 Exhibits E8:14; E9:14; and E10:13.

⁷¹ See, 2011 Exhibits E7:11 and E8:11.

model because the agricultural land and horticultural land in those counties was more similar to Douglas County.⁷² The County Assessor concluded that the analysis “revealed that the soil productivity rating for each sale did not tend to correlate with the sale price.”⁷³ Based on this observation, the County Assessor did not assess special valuation property by land capability group (LCG),⁷⁴ but instead assigned a flat per acre value based upon the use of the land; whether dry, grass, or irrigated.⁷⁵

The County Assessor constructed a single model for tax year 2012 utilizing 243 sales of “at least 95% predominant use and 321 [sales] with at least 80% predominant use” from Burt, Cass, Johnson, Otoe, Nemaha, Pawnee, and Richardson Counties.⁷⁶ The County Assessor again concluded that the every soil type within a given use should be assessed at the same value.⁷⁷

Stan Mlotek testified that he had primary responsibility for determining the assessed values of special valuation properties in Douglas County. He asserted that the County Assessor relied upon agricultural sales from other counties to determine the assessed value of the Subject Property. Mlotek asserted the sales that the County Assessor used were from counties which had similar topography and geological features as compared to Douglas County.

The Commission is authorized to take notice of the Reports and Opinions of the Property Tax Administrator as contained in exhibits from Statewide Equalization proceedings.⁷⁸ In connection with tax year 2011, the Commission reviewed the Reports and Opinions for Burt,⁷⁹ Johnson,⁸⁰ Nemaha,⁸¹ Pawnee,⁸² and Richardson Counties,⁸³ the same counties utilized by the Douglas

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Land capability groups are “groups 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.” 350 Neb. Admin. ch. 14 §002.41 (03/09).

⁷⁵ See, 2011 Exhibits E7:11 and E8:11.

⁷⁶ See, 2012 Exhibits E9:13 and E10:12.

⁷⁷ See, 2012 Exhibits E8:14, E9:14, and E10:13.

⁷⁸ See, 442 Neb. Admin. Code, ch. 5 §031.02 (06/11). See also, Neb. Rev. Stat. §77-5016(3)(2012 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record). The Commission will refer to the Reports and Opinions of the Property Tax Administrator by their exhibit numbers from the Commission’s Annual Statewide Equalization Proceedings Maintained by the Commission and available on the Commission’s web site.

⁷⁹ 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11.

⁸⁰ 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 49.

⁸¹ 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 64.

⁸² 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 67.

⁸³ 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 74.

County Assessor. The Commission's review indicated that the assessor in each of these counties assigned an individual level of value for each LCG for dry and grass use. Additionally, the Commission notes, with some exceptions, that the greater the soil capability, the higher the value of the agricultural and horticultural real property.⁸⁴

In connection with tax year 2012, the Commission reviewed the Reports and Opinions for Burt,⁸⁵ Cass,⁸⁶ Johnson,⁸⁷ Otoe,⁸⁸ Nemaha,⁸⁹ Pawnee,⁹⁰ and Richardson Counties,⁹¹ the same counties utilized by the Douglas County Assessor. Similarly, the Commission's review indicated that in each of these counties an individual level of value for each LCG for dry and grass use was assigned. Again, the Commission notes, with some exceptions, that the greater the soil capability, the higher the value of the agricultural and horticultural real property.⁹² The Commission also notes that for tax year 2012, the Douglas County Assessor assigned a special value of \$2,900 per acre for LCG's 3D1, 3D, 4D1, and 4D.⁹³ This is a higher per acre special valuation than the assessed agricultural and horticultural value in any of the counties which the Douglas County Assessor considered comparable to the Subject Property.⁹⁴ Similarly, the Douglas County Assessor assigned a special valuation of \$1,400 per acre for LCG's 2G, 3G, and 4G.⁹⁵ Again, this is a higher per acre special valuation than the assessed agricultural and

⁸⁴ See, 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:65-66; Exhibit 66:66-67; Exhibit 64:53-55; Exhibit 49:53-55; and Exhibit 74:52-54. The Commission notes a few instances where real property with a lower soil capability was valued higher than real property with a higher soil capability. See, e.g., Richardson County, Market Area 44, Dry, 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 74:53; and Johnson County, Market Area 1, Grass, 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 49:53. The Commission is aware that other appropriate agricultural influences may have influenced the value of agricultural properties in the comparable counties, however, in the specific instances where county assessors valued soil types with higher capabilities lower than soil types with lesser capabilities, the Commission has no explanation for the decision.

⁸⁵ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11.

⁸⁶ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 13.

⁸⁷ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 49.

⁸⁸ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 66.

⁸⁹ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 64.

⁹⁰ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 67.

⁹¹ 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 74.

⁹² See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 64:37; Exhibit 66:38; Exhibit 67:35; and Exhibit 74:37. The Commission notes a few instances where real property with a lower soil capability was valued higher than real property with a higher soil capability. See, e.g., Richardson County, Market Area 50, Grass, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 74:37; and Burt County, Market Area 1, Grass and Market Area 2, Grass, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36. The Commission is aware that other appropriate agricultural influences may have influenced the value of agricultural properties in the comparable counties, however, in the specific instances where county assessors valued soil types with great capabilities lower than soil types with lesser capabilities the Commission has no explanation for the decision.

⁹³ See E17:5, E20:4, E23:5, E26:5, E29:5.

⁹⁴ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 64:37; Exhibit 66:38; Exhibit 67:35; and Exhibit 74:37.

⁹⁵ See E17:5, E23:5, E29:5.

horticultural value in any of the counties which the Douglas County Assessor considered comparable to the Subject Property.⁹⁶ The Commission also notes that the County Assessor in Cass County determined that sales prices of agricultural and horticultural properties in Cass County were influenced by non-agricultural and non-horticultural uses, and thus agricultural and horticultural properties in Cass County required special valuation.⁹⁷

D. Analysis

When evaluating the Douglas County Assessor's methodology used to determine the special valuation of agricultural and horticultural properties in Douglas County, the Commission is mindful that Nebraska law requires the Douglas County Assessor to undertake the difficult process of creating a theoretical market for agricultural and horticultural real property in Douglas County.

1. Flood Plain and Flood Way

The Taxpayer alleged that the value of the Subject Properties should be reduced because of their location in a flood plain or flood way. The Taxpayer did not, however, provide any data or opinions quantifying the impact of flood plain or flood way designations on the special value of agricultural and horticultural property in Douglas County.

Additionally, no source of information quantifying this impact is available to the Commission in statutorily noticed sources. The Commission finds that there is insufficient evidence to determine whether flood way or flood plain designations in Douglas County influence the special valuation of agricultural and horticultural property.

2. Influenced Sales

Mlotek indicated that the Douglas County Assessor only used sales from counties with comparable topography and geological characteristics. However, the agricultural and horticultural sales in Cass County utilized by the Douglas County Assessor were influenced by the potential use of the properties for non-agricultural or non-horticultural purposes. The County

⁹⁶ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 64:37; Exhibit 66:38; Exhibit 67:35; and Exhibit 74:37.

⁹⁷ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 13:39.

Assessor for Cass County concluded that Cass County required special valuation. Even though the topography and geological characteristics of Cass County are similar to Douglas County, it was unreasonable for the Douglas County Assessor to examine influenced sales to determine the uninfluenced special value of Douglas County agricultural and horticultural property. Any conclusions about uninfluenced agricultural and horticultural values derived from data consisting of influenced sales are inherently flawed.

It appears this methodology involved, at least to some degree, valuing agricultural and horticultural property in Douglas County based upon the sales of influenced properties from Cass County. The Commission finds that such a methodology to determine the special valuation of the agricultural and horticultural property in Douglas County is unreasonable. By including influenced sales in the analysis, Douglas County special valuation properties were not valued as though uninfluenced.

The Commission's review of the Reports and Opinions, as indicated in Section B of this Decision and Order, revealed that although the Douglas County Assessor obtained the data used in its models from comparable counties, it arrived at significantly different conclusions than did the assessors in these comparable counties concerning the significance of soil capabilities and the actual value of agricultural land.⁹⁸ Particularly in tax year 2012, the Douglas County Assessor determined that the special value for 3D1, 3D, 4D1, and 4D land capability groups was \$2,900 dollars.⁹⁹ This exceeded the assessed value for these same land capability groups in every county the Douglas County Assessor deemed was comparable.¹⁰⁰ Similarly, the Douglas County Assessor valued the LCG's 2G, 3G1, 3G, 4G1, and 4G at \$1,400,¹⁰¹ again, in excess of the assessed value for these same LCG's in all of the counties which the Douglas County Assessor deemed were comparable.¹⁰²

⁹⁸ See, E16-30 (Subject Property property record cards); See also, 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:65-66; Exhibit 66:66-67; Exhibit 64:53-55; Exhibit 49:53-55; and Exhibit 72:52-54; 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 66:38; Exhibit 64:37; Exhibit 67:35; and Exhibit 74:37; See also, 2013 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:37; Exhibit 13:38; Exhibit 27:42; Exhibit 66:36; Exhibit 78:37; and Exhibit 89:38.

⁹⁹ See, E17, E20, E23, E26, and E29.

¹⁰⁰ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 66:38; Exhibit 64:37; Exhibit 67:35; and Exhibit 74:37.

¹⁰¹ See, E17, E20, E23, E26, and E29.

¹⁰² See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 66:38; Exhibit 64:37; Exhibit 67:35; and Exhibit 74:37.

The Commission finds that certain agricultural influences may cause soil types with varying capabilities to have similar market values, or there may be uncommon instances where LCG's with higher capabilities are valued lower than LCG's with lower soil capability. In these circumstances, where regression analysis done by multiple county assessors has resulted in contrary conclusions, and the Douglas County Assessor's regression analysis used to make this determination included influenced sales, the Commission finds that the Douglas County Assessor's conclusion that soil capability does not affect the special valuation of agricultural and horticultural land in Douglas County is unreasonable.

3. Special Valuation Determination

Having found that the County Board's determinations were unreasonable, and based upon the unique evidence in these appeals, the Commission appears to have three adjudicative options, each unsatisfying for different reasons: (1) to affirm the County Board's determinations, even though unreasonable, if the Commission is to conclude that there is not enough evidence to determine the special valuation of the Subject Property; (2) to use unconventional but reasonable methods to determine the special valuation of the Subject Property; or (3) to order the reassessment of all special valuation agricultural land in Douglas County for both tax years.¹⁰³ The Commission will not order the reassessment of all special value property in Douglas County for tax years 2011 and 2012 because it would be "excessive compared to the problems addressed."¹⁰⁴ Based on the evidence before it in these appeals, the Commission will not affirm unreasonable determinations of the special valuation of agricultural or horticultural properties by a County Board when a reasonable, though somewhat unconventional, method for determining the special valuation of the Subject Property is available. Given the unique nature of this case, the Commission will apply an adjudicative remedy to determine the special valuation of the Subject Property using the reasonable methods available to the Commission as explained below.

The Commission notes with significant emphasis that the method applied by the Commission to determine the special valuation of the Subject Property is an adjudicative remedy, applied only to these specific appeals. Nothing in the Commission's order should be construed as endorsing

¹⁰³ See, Neb. Rev. Stat. §77-5017(1)(2012 Cum. Supp.).

¹⁰⁴ Neb. Rev. Stat. §77-5017(1)(2012 Cum. Supp.).

the method as the preferred method to be used by assessment officials for determining the special valuation of agricultural property in Nebraska.

The special values per acre of differing soil capabilities as reported for Cass County in 2012 were based on uninfluenced sales of real property sold for agricultural and horticultural purposes excluding the influenced sales in those counties.¹⁰⁵ In other words, while it was unreasonable for Douglas County to use influenced sales from these comparable counties to draw conclusions concerning the special valuation of real property in Douglas County, it is not unreasonable to look at the special values of LCG's in Cass County because the methodologies employed by the Cass County Assessor avoided the use of influenced sales of real property.¹⁰⁶ The Commission finds that the most reasonable adjudicative remedy for determining the special valuation of the Subject Property in these specific appeals and based upon the specific evidence before the Commission in these appeals is to review the special valuations for counties which the Douglas County Assessor asserted had agricultural land most comparable to the agricultural land in Douglas County and determine the median for each LCG, and then apply the median to the actual LCG's of the Subject Property.¹⁰⁷

The Commission has reviewed the Irrigated, Dry, and Grass special values or assessed values for Burt, Johnson, Nemaha, Pawnee, and Richardson Counties for tax year 2011, and finds that the LCG's of the Subject Property should be valued as follows: 1A1 = \$2,828; 2A1 = \$2,705, 2A = \$2,263; 3A1 = \$1,830; 3A = \$2,175; 1D1 = \$2,340; 2D1 = \$2,285; 2D = \$1,798; 3D1=\$1,525; 3D = \$1,813; 2G = \$993; 3G = \$983; 4G = \$737; and all other LCG's as contained in the property record cards.¹⁰⁸

The Commission has reviewed the Irrigated, Dry, and Grass special or assessed values for Burt, Cass, Johnson, Otoe, Nemaha, Pawnee, and Richardson Counties for tax year 2012, and finds that the LCG's of the Subject Property should be valued as follows: 1A1 = \$3,500; 2A1 = \$2,997; 2A = \$2,806; 3A1 = \$2,485; 3A = \$2,576; 1D1 = \$2,950; 2D1 = \$2,652; 2D = \$2,369;

¹⁰⁵ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 13:33.

¹⁰⁶ See, 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 13:33; See also, 2013 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:37; Exhibit 13:38; Exhibit 27:42; Exhibit 66:36; Exhibit 78:37; and Exhibit 89:38.

¹⁰⁷ Portions of the Subject Property are classified as 2GT, 3GT, 4GT, 1GT1, 2GT1, Waster, River, and Home Site. See, E16-30. There are no report special values for any of these subclasses in comparable counties. The Commission determines that it does not have sufficient evidence to reasonably determine the special value for any GT use property or Waste. The Commission finds that River and Home Site are not agricultural uses and would not have a special value.

¹⁰⁸ See, Table 1, 2011 Average Assessed Values.

3D1=\$2,250; 3D = \$2,357; 2G = \$1,162; 3G = \$1,135; 4G = \$729; and all other LCG's as contained in the property records cards.¹⁰⁹

Therefore, applying the median of the LCG's from the comparable counties for each tax year, the Commission finds as follows:

The special valuation of the Subject Property in Case No. 11A 162 is \$118,260.¹¹⁰

The special valuation of the Subject Property in Case No. 12A 105 is \$165,333.¹¹¹

The special valuation of the Subject Property in Case No. 11A 163 is \$145,712.¹¹²

The special valuation of the Subject Property in Case No. 12A 106 is \$190,039.¹¹³

The special valuation of the Subject Property in Case No. 11A 164 is \$157,472.¹¹⁴

The special valuation of the Subject Property in Case No. 12A 103 is \$194,534.¹¹⁵

The special valuation of the Subject Property in Case No. 11A 165 is \$219,197.¹¹⁶

The special valuation of the Subject Property in Case No. 12A 107 is \$286,249.¹¹⁷

The special valuation of the Subject Property in Case No. 12A 108 is \$39,170.¹¹⁸

¹⁰⁹ See, Table 2, 2012 Average Assessed Values.

¹¹⁰ $(7.4 \text{ acres} \times \$2,285) + (12.84 \text{ acres} \times \$1,798) + (51.07 \text{ acres} \times \$1,525) + (7.66 \text{ acres} \times \$50) = \$118,260$. See, 2011 Exhibits E7:3 (listing acres of subclasses found on the Subject Property).

¹¹¹ $(7.4 \text{ acres} \times \$2,652) + (12.84 \text{ acres} \times \$2,369) + (51.07 \text{ acres} \times \$2,250) + (7.66 \text{ acres} \times \$50) = \$165,333$. See, 2012 Exhibits E9:3 (listing acres of subclasses found on the Subject Property).

¹¹² $(14.35 \text{ acres} \times \$2,340) + (62.30 \text{ acres} \times \$1,798) + (2.35 \text{ acres} \times \$50) = \$145,712$. See, 2011 Exhibits E8:4 (listing acres of subclasses found on the Subject Property).

¹¹³ $(14.35 \text{ acres} \times \$2,950) + (62.30 \text{ acres} \times \$2,369) + (2.35 \text{ acres} \times \$50) = \$190,039$. See, 2012 Exhibits E10:4 (listing acres of subclasses found on the Subject Property).

¹¹⁴ $(16.00 \text{ acres} \times \$2,705) + (14.80 \text{ acres} \times \$2,263) + (6.00 \text{ acres} \times \$2,340) + (4.47 \text{ acres} \times \$2,285) + (15.9 \text{ acres} \times \$1,525) + (11.2 \text{ acres} \times \$2,828) + (10.48 \text{ acres} \times \$50) = \$157,472$. See, 2011 Exhibits E9:5 (listing acres of subclasses found on the Subject Property).

¹¹⁵ $(16.00 \text{ acres} \times \$2,997) + (14.80 \text{ acres} \times \$2,806) + (6.00 \text{ acres} \times \$2,950) + (4.47 \text{ acres} \times \$2,652) + (15.9 \text{ acres} \times \$2,250) + (11.2 \text{ acres} \times \$3,500) + (10.48 \text{ acres} \times \$50) = \$194,534$. See, 2012 Exhibits E7:4 (listing acres of subclasses found on the Subject Property).

¹¹⁶ $(4.0 \text{ acres} \times \$2,340) + (106.60 \text{ acres} \times \$1,798) + (3 \text{ acres} \times \$1,813) + (12.5 \text{ acres} \times \$993) + (6.35 \text{ acres} \times \$50) = \$219,197$. See, 2011 Exhibits E10:3 (listing acres of subclasses found on the Subject Property).

¹¹⁷ $(4.0 \text{ acres} \times \$2,950) + (106.60 \text{ acres} \times \$2,369) + (3 \text{ acres} \times \$2,357) + (12.5 \text{ acres} \times \$1,162) + (6.35 \text{ acres} \times \$50) + (1.30 \text{ acres} \times \$5,000) = \$286,249$. See, 2012 Exhibits E11:5 (listing acres of subclasses found on the Subject Property).

¹¹⁸ $(9.39 \text{ acres} \times \$2,369) + (4.30 \text{ acres} \times \$2,357) + (2.62 \text{ acres} \times \$1,135) + (1.2 \text{ acres} \times \$977) + (2.5 \text{ acres} \times \$750) + (.96 \text{ acres} \times \$750) + (.98 \text{ acres} \times \$50) = \$39,170$. See, 2012 Exhibits E12:4 (listing acres of subclasses found on the Subject Property).

The Commission notes that applying the median values to the Subject Property in Case No. 11A 161 indicate a special valuation of \$189,816.¹¹⁹ The Douglas County Assessor and County Board determined the special valuation of the Subject Property in Case No. 11A 161 was \$189,160.¹²⁰ The Commission notes that applying the median values to the Subject Property in Case No. 12A 104 indicate a special valuation of \$233,134.¹²¹ The County Board determined the special valuation of the Subject Property in Case No. 12A 104 was \$227,380.¹²² There is no evidence that the Taxpayer was given notice in these proceedings of a higher value than \$189,160 for tax year 2011 and \$227,380 for tax year 2012. The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.¹²³ The Commission notes that no notice as required by the Commission's Rules and Regulations was ever perfected. The Commission finds that it cannot set the taxable value of the Subject Property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator in these appeals. Therefore, the Commission finds that the special valuation of the Subject Property in Case No. 11A 161 was \$189,160 and in Case No. 12A 104 was \$227,380.

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 clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

¹¹⁹ (35.69 acres x \$2,828) + (11.00 acres x \$2,705) + (3 acres x \$1,830) + (5.5 acres x \$2,175) + (5.00 acres x \$2,340) + (2.00 acres x \$2,285) + (2.00 acres x \$1,798) + (2.00 acres x \$1,525) + (10.25 acres x \$1,813) + (3.56 acres x \$50) = \$189,816. See, 2011 Exhibits E6:3 (listing acres of subclasses found on the Subject Property).

¹²⁰ See, 2011 Exhibits E1.

¹²¹ (35.69 acres x \$3,500) + (11.00 acres x \$2,997) + (3 acres x \$2,485) + (5.5 acres x \$2,576) + (5.00 acres x \$2,950) + (2.00 acres x \$2,652) + (2.00 acres x \$2,369) + (2.00 acres x \$2,250) + (10.25 acres x \$2,357) + (3.56 acres x \$50) = \$233,134. See, 2012 Exhibits E8:3 (listing acres of subclasses found on the Subject Property).

¹²² See, 2012 Exhibits E2.

¹²³ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

For all of the reasons set forth above, the determinations of the County board in Case Nos. 11A 162, 11A 163, 11A 164, 11A 165, 12A 103, 12A 105, 12A 106, 12A 107, & 12A 108 should be vacated and reversed.

For all of the reasons set forth above, the appeals of the Taxpayer in Case Nos. 11A 161 and 12A 104 are denied and the decisions of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 in Case Nos. 11A 162, 11A 163, 11A 164, 11A 165, 12A 103, 12A 105, 12A 106, 12A 107, & 12A 108 are vacated and reversed.¹²⁴
2. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 in Case Nos. 11A 161 and 12A 104 are affirmed.
3. The taxable valuations of the Subject Property for tax year 2011 are:

	11A 161
Total	\$189,160
	11A 162
Total	\$118,260
	11A 163
Total	\$145,712
	11A 164
Land	\$177,472 ¹²⁵
Improvements	<u>\$ 10,000</u>
Total	\$187,472

¹²⁴ Taxable 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.

¹²⁵ Includes \$20,000 for one acre of farm home site.

11A 165

Land	\$245,697 ¹²⁶
Improvements	<u>\$ 32,330</u>
Total	\$278,027

4. The taxable valuations of the Subject Property for tax year 2012 are:

12A 103

Land	\$214,534 ¹²⁷
Improvements	<u>\$ 10,000</u>
Total	\$224,534

12A 104

Total	\$227,380
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12A 105

Total	\$165,333
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12A 106

Total	\$190,039
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12A 107

Land	\$312,749 ¹²⁸
Improvements	<u>\$ 32,300</u>
Total	\$345,049

12A 108

Land	\$64,170 ¹²⁹
Improvement	\$ 6,600
Total	\$70,770

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

¹²⁶ Includes \$20,000 for one acre of farm home site and \$6,500 for 1.3 acres of farm site.

¹²⁷ Includes \$20,000 for one acre of farm home site.

¹²⁸ Includes \$20,000 for one acre of farm home site and \$6,500 for 1.3 acres of farm site.

¹²⁹ Includes \$25,000 for five acres of farm site.

7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2011 and 2012.
9. This Decision and Order is effective for purposes of appeal on July 7, 2015.¹³⁰

Signed and Sealed: July 7, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

¹³⁰ 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.

Table 1
2011 Average Assessed Values¹³¹

	1A1	2A1	2A	3A1	3A	1D1	2D1	2D	3D1	3D	2G	3G	4G1
Burt Area 1	3020	2705	2545	2067	2175	2970	2635	2520	2091	2120	1019	1129	1070
Burt Area 2	3455	3065	2930	2713	2800	3390	3025	2890	2763	2760	1035	1164	1166
Nemaha Area 1						2413	2166	2534	2190	1774	758	1017	778
Nemaha Area 8100	2360	1626	1564	1360	2196	2266	1955	2726	1271	2595	980	994	761
Nemaha Area 8300	2611	2474	2316	1849	1964	2455	2270	1661	1439	1851	974	971	757
Johnson Area 1	3353	3100	2460	1905		2507	2309	1718	1600	1615	1249	1236	966
Johnson Area 2	3132	2940	2210	1900		2444	2310	1872	1900		1108		872
Johnson Area 3	2905	2825	2402	1730		1853	1795	1367	1380		1005		794
Richardson Area 41	1890	1836	1710	979	1295	2077	2614	1723	1212	1567	786	830	665
Richardson Area 44						1918	2299	1645	1079	1378	733	768	639
Richardson Area 50	2570	2310	2140	1630		2244	1969	1996	1924	2024	834	840	694
Pawnee	2750		1940	1810		2200	1374	1550	1450	1250	1206	938	834
Ave	2,805	2,542	2,222	1,794	2,086	2,395	2,227	2,017	1,692	1,893	974	989	833
Median	2,828	2,705	2,263	1,830	2,175	2,340	2,285	1,798	1,525	1,813	993	983	786

¹³¹ 2011 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:65-66; Exhibit 66:66-67; Exhibit 64:53-55; Exhibit 49:53-55; and Exhibit 72:52-54.

Table 2
2012 Average Assessed Values¹³²

	1A1	2A1	2A	3A1	3A	1D1	2D1	2D	3D1	3D	2G	3G	4G1
Burt Area 1	3625	3245	3050	2485	2610	3,565	3,160	3,025	2,506	2,545	1,222	1,337	1,281
Burt Area 2	3525		2990	2766	2855	3,460	3,085	2,950	2,818	2,815	1,057	1,196	1,188
Cass	3510	2990	2990	2430	2430	2,790	2,660	2,369	2,250	2,249	790	860	830
Johnson	3331	3100	2632	2500		2,465	2,310	1,882	1,950	1,962	1,204	1,236	940
Otoe 7000	3240	2910	2010	1890		2,950	2,650	1,830	1,720		1,157		996
Otoe 8000	3630	3360	2750	2750	2750	3,300	3,050	2,500	2,500	2,500	1,282	1,111	1,037
Nemaha	2951	2458	2806	2022	2541	2,933	2,652	2,038	1,718	2,267	1,162	1,158	977
Pawnee	2750		2020	1905		2,200	1,542	1,615	1,525	1,250	1,254	945	919
Richardson	3500	2997	3100	2718	2300	3,074	2,523	2,592	2,473	2,446	973	879	829
Ave	3,340	3,009	2,705	2,385	2,581	2,971	2,626	2,311	2,162	2,254	1,122	1,090	1,000
Median	3,500	2,997	2,806	2,485	2,576	2,950	2,652	2,369	2,250	2,357	1,162	1,135	977

¹³² 2012 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 11:36; Exhibit 13:36; Exhibit 49:36; Exhibit 66:38; Exhibit 64:37; Exhibit 67:35; and Exhibit 74:37.