

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

Bonnie M. Bayliss,  
Appellant,

v.

Red Willow County Board of Equalization,  
Appellee.

Case Nos: 14A 015 & 14A 016 & 14A 017  
& 14A 018 & 14A 019

Decision and Order Reversing the County  
Board of Equalization in Case No. 14A 016  
and Affirming the County Board of  
Equalization in Case Nos. 14A 015 &  
14A 017 & 14A 018 & 14A 019

**For the Appellant:**  
Bonnie M. Bayliss,  
Pro Se.

**For the Appellee:**  
Philip P. Lyons,  
Deputy Red Willow County Attorney.

The appeals were heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property includes one improved agricultural parcel and four unimproved agricultural parcels located in Red Willow County, Nebraska. The Property Record Files (“PRFs”) for the Subject Property parcels for tax year 2014 are found at Exhibits 6 through 10. These PRFs include the legal description for each Subject Property parcel.

**II. PROCEDURAL HISTORY**

The Red Willow County Assessor (herein referred to as the “County Assessor”) determined that the assessed value of the unimproved 48.6-acre Subject Property parcel in Case No. 14A-015 was \$61,703 for tax year 2014. Bonnie M. Bayliss (referred to herein as the “Taxpayer”), protested the 2014 assessment to the County Board and requested an assessed valuation of \$38,000 for tax year 2014. The County Board determined that the taxable value was \$61,703 for tax year 2014.<sup>1</sup>

The County Assessor determined that the assessed value of the unimproved 35.67-acre Subject Property parcel in Case No. 14A-016 was \$30,443 for tax year 2014. The Taxpayer protested the 2014 assessment to the County Board and requested an assessed valuation of

---

<sup>1</sup> E1.

\$19,000 for tax year 2014. The County Board determined that the taxable value was \$30,443 for tax year 2014.<sup>2</sup>

The County Assessor determined that the assessed value of the improved 112.79-acre Subject Property parcel in Case No. 14A-017 was \$108,606 for tax year 2014. The Taxpayer protested the 2014 assessment to the County Board and requested an assessed valuation of \$80,000 for tax year 2014. The County Board determined that the taxable value was \$108,606 for tax year 2014.<sup>3</sup>

The County Assessor determined that the assessed value of the unimproved 80.57-acre Subject Property parcel in Case No. 14A-018 was \$101,294 for tax year 2014. The Taxpayer protested the 2014 assessment to the County Board and requested an assessed valuation of \$65,000 for tax year 2014. The County Board determined that the taxable value was \$101,294 for tax year 2014.<sup>4</sup>

The County Assessor determined that the assessed value of the unimproved .67-acre Subject Property parcel in Case No. 14A-019 was \$835 for tax year 2014. The Taxpayer protested the 2014 assessment to the County Board and requested an assessed valuation of \$450 for tax year 2014. The County Board determined that the taxable value was \$850 for tax year 2014.<sup>5</sup>

The Taxpayer appealed the decisions 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 and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on June 10, 2015.

A majority of the Commission constitutes a quorum sufficient to transact business.<sup>6</sup> The Commission must deny relief “in any hearing or proceeding unless a majority of the Commissioners present determine that the relief should be granted.”<sup>7</sup> A majority is defined as, “The greater number. The number greater than half of any total.”<sup>8</sup> Commissioner Freimuth and Commissioner Salmon were present at the hearing and constituted a majority of the Commission, and, therefore, a quorum sufficient to transact business. A majority of the Commission has determined that relief should not be granted. The determination of the County Board is affirmed.

---

<sup>2</sup> E2.

<sup>3</sup> E3.

<sup>4</sup> E4.

<sup>5</sup> E5.

<sup>6</sup> See, Neb. Rev. Stat. §77-5005(2) (2014 Cum. Supp.).

<sup>7</sup> See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.).

<sup>8</sup> *Black’s Law Dictionary 6th Edition*, West Group, p. 955 (1990).

### III. STANDARD OF REVIEW

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>9</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>10</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>11</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>12</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>13</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>14</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>15</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

---

<sup>9</sup> 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).

<sup>10</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>11</sup> *Id.*

<sup>12</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>13</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>14</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>15</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>16</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>17</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>18</sup>

## IV. VALUATION

### A. General Valuation Law for Agricultural & Horticultural Land

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>19</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>20</sup> The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.”<sup>21</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>22</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>23</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>24</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

---

<sup>16</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>17</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>18</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>21</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>22</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>23</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009)

<sup>24</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>25</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>26</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>27</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 Equalization and Review Commission to achieve more uniform and proportionate valuations.<sup>28</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:

---

<sup>25</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

<sup>26</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>27</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>28</sup> See, Neb. Rev. Stat. §77-1363 (Cum. Supp. 2014).

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>29</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>30</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>31</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>32</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>33</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 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>34</sup>

---

<sup>29</sup> Neb. Rev. Stat. §77-103.01 (Reissue 2009).

<sup>30</sup> Neb. Rev. Stat. §77-701(1) (Cum. Supp. 2014).

<sup>31</sup> 350 Neb. Admin. Code, ch. 14 (3/09).

<sup>32</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>33</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”).

<sup>34</sup> 350 Neb. Admin. Code, ch. 14, §§004.04A – 004.04G (3/09).

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>35</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 an LCG.<sup>36</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>37</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>38</sup> In this regard, the regulations state as follows: "Land Capability Classification is a system for showing the suitability of soils for most kinds of crops. These are determined by Natural Resources Conservation and Service."<sup>39</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:

---

<sup>35</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>36</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>37</sup> 350 Neb. Admin. Code, ch. 14, §002.41 (3/09).

<sup>38</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).

<sup>39</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).

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>40</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>41</sup> PAD’s regulations designate four principal LCGs under the three primary subclasses of agricultural and horticultural property as follows: (1) Irrigated Cropland – 1A, 2A, 3A, 4A; (2) Dryland Cropland – 1D, 2D, 3D, 4D; and (3) Grassland - 1G, 2G, 3G, 4G.<sup>42</sup> PAD’s regulations also permit county assessors to “create” additional LCG sub-classifications if needed “to achieve uniform and proportionate valuation.”<sup>43</sup>

## **B. Summary of the Evidence**

Bonnie M Bayliss, the Taxpayer, testified at the hearing before the Commission. The Taxpayer asserted that the County Board’s reliance on the sales comparison approach used by the County Assessor to value the Subject Property for tax year 2014 was unreasonable or arbitrary because it results in taxes that render agricultural operations unprofitable. In support of this assertion, the Taxpayer submitted income and expense information for Subject Property parcels showing a profit in tax year 2012 when commodity prices were high and losses in tax years 2013 and 2014 due to reduced commodity prices and increased property taxes.<sup>44</sup>

---

<sup>40</sup> 350 Neb. Admin. Code, ch. 14, §004.08E (3/09).

<sup>41</sup> 350 Neb. Admin. Code, ch. 14, §004.08A-H (3/09).

<sup>42</sup> 350 Neb. Admin. Code, ch. 14 §004.08F (03/09).

<sup>43</sup> 350 Neb. Admin. Code, ch. 14, §004.09 (3/09).

<sup>44</sup> See, E7:3 & E11.

The Taxpayer asserted that the County should use the income approach to value agricultural land. The Taxpayer also asserted that 4.74 acres of the Subject Property parcel subject to appeal in Case No. 14A-016 should be designated as wasteland rather than dryland.

The Subject Property's five parcels include includes 278.3 total acres. The improved Subject Property parcel includes 112.79 acres of land assessed at \$94,699 and an improvement component assessed at \$13,907.<sup>45</sup> The four unimproved Subject Property parcels total 165.51 acres of agricultural land (48.6 acres + 35.67 acres + 80.57 acres + .67 acres = 165.51 acres).<sup>46</sup> The Taxpayer's protests provide a combined \$202,450 opinion of value for the five Subject Property parcels for tax year 2014.<sup>47</sup>

Other than submitting Property Record Files ("PRFs") for each Subject Property parcel, the County Board did not present a case. The PRFs and County Board's final determination documents received in evidence indicate that the County Board relied upon the County Assessor's opinions of value derived from agricultural land sales.<sup>48</sup> This documentation indicates that the substantial majority of the Subject Property is classified as dryland or grassland for tax year 2014.<sup>49</sup>

## **B. Valuation Analysis**

### **1. Agricultural and Horticultural Land Values for Tax Year 2014**

The Taxpayer generally asserts that the assessed values of Red Willow County agricultural and horticultural land for tax year 2014 should be based on the income approach rather than the sales comparison approach.

In light of the explosion in agricultural land values over the past decade, this Commissioner feels that historical perspective regarding Nebraska's property tax system is useful for purposes of addressing the Taxpayer's assertions and heartfelt concerns. In this regard, Article VIII of the Nebraska Constitution provides the foundation for the taxation of all classes of property, including agricultural, commercial, and residential. Specifically, Article VIII, section 1,

---

<sup>45</sup> E8 (PRF for improved Subject Property parcel).

<sup>46</sup> See, E6, E7, E9, and E10 (PRFs for unimproved Subject Property parcels).

<sup>47</sup> See, E1 – E5 (County Board's final determination documents, which include protest information).

<sup>48</sup> See, E1 – E5 (County Board's final determination documents, which include the basis of the County Assessor's opinions of value relied upon by the County Board); E6 - E10 (PRFs for Subject Property parcels, which include the County Assessor's agricultural land use inventory and values for Land Capability Groups based on the sales comparison approach).

<sup>49</sup> See, E6 - E10 (PRFs for Subject Property parcels).

subsection (1), states as follows: “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.” In addition to this uniformity and proportionality clause, the property taxation of agricultural land such as the Subject Property is governed by Article VIII amendments approved by Nebraska voters in 1984 and 1990.

The 1984 amendment to Article VIII of Nebraska’s Constitution provided for separate classification of agricultural and horticultural land.<sup>50</sup> This Constitutional amendment was placed before the voters of Nebraska by the Legislature in order to address concern that agricultural land values would increase dramatically in the midst of the farm crisis in the aftermath of the Nebraska Supreme Court’s ruling in *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization* (sometimes referred to herein as “Kearney Convention Center”), which determined that the uniformity clause of Article VIII of the Nebraska Constitution does not permit valuation of farmland at actual value levels less than commercial or residential classes for property tax purposes.<sup>51</sup> This 1984 amendment stated as follows: “the Legislature may provide that agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation.”<sup>52</sup>

The Legislature enacted legislation (herein referred to as “L.B. 271”) in 1985 to implement the 1984 Constitutional amendment.<sup>53</sup> L.B. 271 created an assessment valuation system for agricultural land, generally codified at Nebraska Statutes sections 77-1358 and 77-1368, based on production capabilities (“earnings capacity”) rather than market value determined with reference to comparable sales.<sup>54</sup> L.B. 271, as codified under Nebraska Statutes sections 77-1330 and 77-1362, required the Tax Commissioner of the Nebraska Department of Revenue to issue a “land valuation manual” consistent with the earnings capacity approach for use by county assessors to assess agricultural land for tax year 1986 and beyond.<sup>55</sup>

---

<sup>50</sup> See, L.R. 7, 88<sup>th</sup> Leg., Spec. Sess. (1984) (L.R. 7 amended Article VIII, section 1).

<sup>51</sup> *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization*, 216 Neb. 292, 344 N.W.2d 620 (1984).

<sup>52</sup> Legislative Resolution 7, 88<sup>th</sup> Leg., Spec. Sess. (1984) (Legislative Resolution 7 amended Article VIII, section 1).

<sup>53</sup> 1985 Neb. Laws L.B. 271.

<sup>54</sup> See, 1985 Neb. Laws L.B. 271 (L.B. 271 was codified at Neb. Rev. Stat. § 77-201 (Supp.1985) and Neb. Rev. Stat. §§ 77-112, 77-1330, 77-1343 to 77-1348, and 77-1358 to 77-1368 (Reissue 1986)); See also, Floor Debate on L.B. 271, at 4169-70, 4182-85 (statements of Sen Landis, Chairman of Task Force Committee, indicating that the sales comparison approach is ill-suited for purposes of valuing farmland).

<sup>55</sup> See, 1985 Neb. Laws L.B. 271, Secs. 7 – 13; Neb. Rev. Stat. §§ 77-1330 and 77-1362 (required county assessors to use the Tax Commissioner’s land valuation manual based on the earnings capacity approach to value farmland for tax year 1986 and beyond) (Reissue 1986); *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 246, 411 N.W.2d 35, 42 (1987).

In 1987 the Nebraska Supreme Court considered the L.B. 271 earnings capacity legislation in *Banner County v. State Board of Equalization and Assessment*, which involved the assessment of irrigated land using the land valuation manual issued by the Tax Commissioner for tax year 1986.<sup>56</sup> Summarizing the earnings capacity approach codified by L.B. 271, the Nebraska Supreme Court stated as follows:

Section 77-1364 states in part: ‘Income streams for irrigated and dryland cropland shall be computed by multiplying gross receipts by landowner share by county.’ Gross receipts are to be computed ‘by multiplying the most recent five-year average price of a crop by the most recent five-year average yield of a crop and weighting the result by the most recent five-year average cropping pattern.’ Crops included are enumerated in the statute. Such data are to be taken from the Nebraska Crop and Livestock Reporting Service (NCLRS) or other state or federal agencies. Landowner share is defined as the proportion of the gross receipts less landowner expenses . . . .

Section 77-1365 sets out the method to be utilized in establishing the capitalization rate. There are two components in the rate: the debt portion and the equity portion, which are based on the relative proportion of real estate debt to farmer equity for the farm sector in the state. The proportions are set at 20 percent debt and 80 percent equity for 1986. After January 1, 1987, those amounts may be adjusted. The percentage of debt is then multiplied by a number equal to the most recent 5-year average of the Federal Land Bank interest rates in the Omaha district, resulting in the weighted debt capitalization rate. The number representing owner equity is then to be multiplied by the most recent 5-year average of 6-month U.S. Treasury bill interest rates, resulting in the weighted equity capitalization rate. The numbers yielded by those computations are then added together to obtain the appropriate capitalization rate.<sup>57</sup>

In the above-noted case, the Banner County Board determined that the Tax Commissioner’s land valuation manual calculation overvalued irrigated cropland for tax year 1986 due to the use of incorrect earnings capacity factors, and that values in adjoining counties for similar land were “considerably” lower.<sup>58</sup> Consequently, the County Board reduced irrigated cropland assessments for tax year 1986 using corrected earnings capacity factors authorized by the Nebraska Statutes codified under L.B. 271.<sup>59</sup> In reversing the State Board of Equalization’s ruling that the Banner County Board did not have the power to deviate from the Tax Commissioner’s land valuation

---

<sup>56</sup> *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>57</sup> *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 247-248, 411 N.W.2d 35, 42-43 (1987).

<sup>58</sup> *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 237, 411 N.W.2d 35, 37 (1987).

<sup>59</sup> *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 237-243, 257-258, 411 N.W.2d 35, 37-40, 48. (1987).

manual valuations for assessment purposes, the Nebraska Supreme Court commented as follows regarding the earnings capacity farmland valuation framework created by the 1984 amendment to Article VIII of the Nebraska Constitution and L.B. 271:

Since [the 1984 Constitutional amendment] did not repeal the uniformity clause, expressly or by implication, the two clauses must be read in such a way as to give effect to both clauses. Thus, L.B. 271 must meet the requirements of both clauses to pass the test of constitutionality. Specifically, [the 1984 Constitutional amendment] permitted the Legislature to classify property as a separate class, but the uniformity clause required the Legislature to treat that class in a uniform manner with other tangible property. ...

Since the uniformity clause was not repealed, the Legislature can divide the class of tangible property into different classifications, but these classifications remain subdivisions of the overall class of 'all tangible property,' and there must be a correlation between them to show uniformity. Such a correlation is made by evidence that all tangible property has been uniformly assessed.

No evidence of such a correlation is present in the record before us or in the statutes implementing [the 1984 Constitutional amendment]. In fact, our review of the statutes shows the correlation requirement was entirely disregarded. Section 77-201 now excepts agricultural land from being taxed at its actual value, but requires such taxation of other tangible property and real estate.

Section 77-112(1) defines actual value for tangible property and real estate as the value ascertained by using a formula containing seven different components to be considered as applicable to the property in question. Subsection (2) of that section provides that the actual value of agricultural land is the value obtained by the application of the earnings capacity formula set forth in §§ 77-1358 to 77-1368.

These sections provide for the separate classification and valuation of agricultural property and are consistent with [the 1984 Constitutional amendment]. Conspicuously absent from these statutes, however, is a requirement that the resulting values obtained for agricultural land be correlated with the values obtained for other real property, as required by the uniformity clause.

These statutes have the effect of permitting the Legislature to do indirectly what it is prevented by the Constitution from doing directly--the taxation of agricultural land in a nonuniform manner from the taxation of other tangible property. This finding is also supported by § 77-1358(3), which states the 1986 land manual valuation method is designed to 'maintain the historical valuation relationship between agricultural land ... and all other real property.' The historical relationship between such properties in this state is the undervaluation of agricultural property as compared to other real property.<sup>60</sup>

---

<sup>60</sup> *Banner County v. State Board of Equalization and Assessment*, 226 Neb. 236, 253-255, 411 N.W.2d 35, 46-47 (1987).

In response to the Nebraska Supreme Court's 1987 decision in *Banner County v. State Board of Equalization and Assessment*, Article VIII was amended once again in 1990 to exclude agricultural and horticultural land from the uniformity clause of the Nebraska Constitution.<sup>61</sup>

This 1990 amendment, which remains in effect as of the date of this opinion, states as follows:

[T]he Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land[.]<sup>62</sup>

L.B. 320, enacted in 1991, implemented this 1990 Constitutional amendment.<sup>63</sup> The legislative history of L.B. 320 as originally introduced indicates that its intent was to return to the earnings capacity formula devised by L.B. 271 in 1985 (summarized above by the Nebraska Supreme Court in *Banner County v. State Board of Equalization and Assessment*).<sup>64</sup> It is important to note, however, that an amendment to this legislation modified the L.B. 271 earnings capacity formula by requiring the use of market-based sales for capitalization rate determination purposes -- as opposed to L.B. 271's use of a non-sales-based debt/equity rate derived with reference to the Omaha Federal Land Bank's five-year interest rate (reflecting the cost of borrowed money) and the five-year average of the six-month U.S. Treasury bill rate (reflecting interest earned on investments other than farmland).<sup>65</sup> As the following "Explanation of Amendments" language from the Legislature's Revenue Committee indicates, the intent of the amended version of L.B. 320 was to value agricultural and horticultural land at 80% of market or actual value:

The amendment to LB 320 devises a new and different formula for the valuation of agricultural and horticultural land. The new formula mixes market value as determined by comparable sales and net income per acre to come up with a market derived capitalization rate. That capitalization rate would then be subject

---

<sup>61</sup> Amended 1990, L.R. 2, 1989 Neb. Laws (L.R. 2 amended Article VIII, section 1) (the Revenue Committee's Statement of Intent for L.R. 2 states that the resolution "responds to the doubt Nebraska Supreme Court has cast on the validity of [Constitutional] Amendment 4 of 1984 and LB 271 of 1985.").

<sup>62</sup> Neb. Const. art. VIII, § 1(4).

<sup>63</sup> 1991 Neb. Laws L.B. 320.

<sup>64</sup> See, Revenue Committee Statement, 1991 Neb. Laws L.B. 320.

<sup>65</sup> See, Revenue Committee Statement, 1991 Neb. Laws L.B. 320.

to an adjustment factor which takes into consideration such items as parcelization and risk. The result is a formula which puts each subclass or categorization of ag land at 80% of market which insures uniformity within the class of agriculture. Other language in the amendment codifies comparable sales language and uniformity as well as functions by county boards of equalization and the Dept. of Revenue.<sup>66</sup>

Another significant development for purposes of this opinion occurred in 1997 with the passage of L.B. 270 (L.B. 270 should not be confused with L.B. 271 discussed above, which was passed in 1985).<sup>67</sup> L.B. 270 required that agricultural and horticultural land “shall be valued at 80% of its actual value.”<sup>68</sup> L.B. 270 also eliminated statutory language permitting valuation based on land productivity, which had survived the above-noted constitutional and legislative responses to the Nebraska Supreme Court’s decision in *Banner County v. State Board of Equalization and Assessment* that impaired the viability of the earnings capacity farmland assessment system created by L.B. 271 in 1985.<sup>69</sup>

As a result of these L.B. 270 revisions enacted in 1997 that focus on actual/market value, the “preferred” method to assess farmland in Nebraska is based on market sales (i.e., the sales comparison approach).<sup>70</sup> The preferential treatment envisioned by the 1984 and 1990 amendments to Article VIII of the Nebraska Constitution is effectuated by assessing farmland at a percentage of actual value (now 75% of actual value via L.B. 968 enacted in 2006), unlike residential and commercial classes which are assessed at 100% of actual value under Nebraska Statutes section 77-201(1).<sup>71</sup>

The Nebraska Department of Revenue’s Property Assessment Division (“PAD”) has issued regulations regarding the assessment of agricultural and horticultural land that supplement Nebraska Statutes.<sup>72</sup> These regulations state that the sales comparison approach identified as a “professionally accepted mass appraisal” method under Nebraska Statutes section 77-112 is the “preferred” method for the valuation of farmland in Nebraska.<sup>73</sup> The regulations also state,

---

<sup>66</sup> See, Revenue Committee Statement, 1991 Neb. Laws L.B. 320.

<sup>67</sup> See, 1997 Neb. Laws L.B. 270, Sec. 11.

<sup>68</sup> See, 1997 Neb. Laws L.B. 270, Sec. 11 (modifying Neb. Rev. Stat § 77-201).

<sup>69</sup> See, 1997 Neb. Laws L.B. 270, Sec. 4 (modifying Neb. Rev. Stat § 77-112 via removal of “earnings capacity” clause).

<sup>70</sup> See, 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

<sup>71</sup> See, 2006 Neb. Laws L.B. 968, Sec. 2 (modifying Neb. Rev. Stat § 77-201), Neb. Rev. Stat § 77-201 (Reissue 2009).

<sup>72</sup> 350 Neb. Admin. Code, ch. 14 (3/09).

<sup>73</sup> See, 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

however, that the income approach remains as a viable valuation method, and provide parameters for its use regarding the valuation of agricultural and horticultural land.<sup>74</sup>

The foregoing history regarding Nebraska's property taxation of farmland illustrates an evolution from a system based on land productivity (earnings capacity income approach) to actual/market value (sales comparison approach). The 2014 Reports & Opinions for Red Willow County issued by the Nebraska Department Revenue's Property Tax Administrator indicate that application of the sales comparison approach for agricultural land valuation purposes resulted in the following increases for tax year 2014: (1) irrigated cropland 46%; (2) dry cropland 53%; and (3) grassland 42%.<sup>75</sup> The Property Tax Administrator's Reports & Opinions state as follows with respect to use of the sales comparison approach in Red Willow County for tax year 2014:

The majority of the agricultural land in Red Willow County consists of rolling plains with moderate to steep slopes; there is a section in the western part of the county that is tableland with more irrigated farming concentrated in this area. The county is primarily dry farmland and grass, with little irrigation. Most parcels in the county are mixed use; nearly every sale will contain some portion of dry and grass acres. Red Willow is in the Middle Republican Natural Resource District (NRD), which imposes water allocation restrictions on irrigated parcels. All of the counties surrounding Red Willow are also in the Republican River Basin, and although the Lower and Upper Republican NRD's have slightly different rules, generally, the same water restrictions apply.

...

Analysis of sales within the county showed the sales to be disproportionate when stratified by sale date. The sample was expanded using comparable sales from all the surrounding counties to resolve the disproportionality. Attempts were also made to expand the land use subclasses; because this area does contain a number of mixed use parcels, only the grass majority land use samples contain a sufficient number of sales.

Assessment actions taken by the assessor include adjustments to all property classes at a rate that was typical for the southwest region of the state this year. While there are few sales in most of the majority land use subclasses, the statistics are generally within the acceptable range. Since parcels in the county are primarily mixed use, samples of sales that were less than 80% majority land use were analyzed. These samples included larger numbers of dry and grass sales and consistently showed medians within the acceptable range. While additional

---

<sup>74</sup> 350 Neb. Admin. Code, ch. 14, § 006.01-03 (3/09).

<sup>75</sup> 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator, Exhibit 73:20 (Section Titles Removed) The complete 2014 Reports & Opinions document for Red Willow County issued by the Nebraska Department of Revenue's Property Tax Administrator can be accessed at the Commission's website.

irrigated sales were not found, analysis of past assessment actions show that irrigated and dry cropland have been adjusted at similar rates, suggesting that the irrigated assessments are also acceptable. A comparison of agricultural values in Red Willow County to the values used in all of the adjoining counties also supports that values are acceptable and equalized with other counties in the area.<sup>76</sup>

As indicated by the above excerpt, Red Willow values for the three major subclasses of agricultural land are similar to surrounding counties.<sup>77</sup> Similarly, the University of Nebraska-Lincoln publication entitled “*Nebraska Farm Real Estate Market Highlights*” indicates that the Red Willow County values for irrigated/dryland cropland and grassland are not excessive for the southwestern portion of Nebraska.<sup>78</sup>

The Taxpayer asserted that the tax year 2014 assessed values of the Subject Property’s agricultural and horticultural land should be based on an income approach rather than the sales comparison approach. Other than the Taxpayer’s testimony and income/expense information, however, the parameters used to support her protest values are not in evidence. Additionally, other than documentation regarding income/expenses and general information regarding commodity prices, the Taxpayer also did not submit documentation to meet the income approach parameters for valuing farmland contained in PAD’s regulations noted above.

The County’s documentation indicates that the assessment of the Subject Property for tax year 2014 was derived from sales of agricultural or horticultural land. Additionally, other than testimony, the Taxpayer did not submit PRFs or other documentation to quantify or otherwise clearly and convincingly support her assertion that the County Board inappropriately assessed the Subject Property based on the sales comparison approach rather than an income approach. Therefore, the Commission finds that the Taxpayer has not adduced sufficient evidence to show that the County Board’s determinations regarding the actual value of the Subject Property parcels were unreasonable or arbitrary for tax year 2014.

---

<sup>76</sup> 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator for Red Willow County, Exhibit 73:23.

<sup>77</sup> See, 2014 Statewide Equalization, Reports & Opinions of the Property Tax Administrator for Red Willow County, Exhibit 73:22 (Inter-County assessment comparison chart).

<sup>78</sup> See, *Nebraska Farm Real Estate Market Developments 2013 – 2014*, p. 32 (contains 2014 value ranges for agricultural land in Nebraska’s Southwest Agricultural Statistics District, which includes Red Willow County). The Commission is allowed to take notice of this publication under 442 Neb. Admin. Code, ch. 5 §031.02 (06/11) and Neb. Rev. Stat. §77-5016(3) (2014 Cum. Supp.) (authorizing the Commission to consider and utilize certain published sources without inclusion in the record).

## 2. Case No. 14A-016 –Wasteland

The tax year 2014 PRF for the Subject Property in Case No. 14A-016 indicates that 4.74 acres in the southwest corner of the parcel is categorized as dryland cropland by the County and assessed at either \$1,500 per acre as 1D dryland or \$1,250 per acre as 4D1 dryland.<sup>79</sup> The Taxpayer asserted that these acres should be assessed as wasteland at \$25 per acre rather than dryland. In support of this assertion, the Taxpayer testified that the 4.74 acres at issue are not used as cropland or grassland and otherwise do not have any economic use.

The Commission notes that the PRF for the Subject Property in Case No. 14A-016 contains 2009 inventory and mapping information designating 4.74 acres in the southwest corner of the parcel as dryland.<sup>80</sup> The County did not present evidence more recent than 2009 to refute the Taxpayer's assertion that this 4.74-acre tract should be designated as wasteland rather than dryland.

The Nebraska Administrative Code defines wasteland as follows:

Wasteland includes land that cannot be used economically and are not suitable for agricultural and horticultural purposes. Such land types include but are not limited to, 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.<sup>81</sup>

The County Board elected not to present a case in support of its valuations of the Subject Property for tax year 2014. With respect to the Subject Property in Case No. 14A-016, the Taxpayer testified that the disputed 4.74 acres had no economic use for agricultural or horticultural purposes during tax year 2014, and the evidence also shows that these areas lie adjacent to land used for agricultural purposes as required under the definition of wasteland noted above.<sup>82</sup> The unrefuted evidence before the Commission, therefore, is that the 4.74 acres in the southwest corner of the Subject Property in Case No. 14A-016 should be classified as wasteland for tax year 2014. Thus, the Commission finds that the Taxpayer has adduced

---

<sup>79</sup> See, E7:5 – E7:6.

<sup>80</sup> See, E7:6 (“2009” is handwritten in the upper right-hand corner of this Exhibit).

<sup>81</sup> 350 Neb. Admin. Code, ch. 14 §002.54 (03/09).

<sup>82</sup> See, E7:5 – E7:6.

sufficient evidence that the County Board's determination to value these acres as dryland rather than wasteland was arbitrary or unreasonable for tax year 2014.

The Commission finds that the 4.74 acres in the southwest corner of the Subject Property parcel in Case No. 14A-016 that are designated as dryland should be classified as wasteland because they have no economical or actual agricultural or horticultural use, and are adjacent to and in common ownership with areas of the Subject Property used for agricultural and horticultural purposes. The PRF for the Subject Property indicates that these 4.74 acres were assessed as something other than wasteland.<sup>83</sup> The Commission finds that these 4.74 acres should be assessed as wasteland at \$25 per acre for tax year 2014.<sup>84</sup> The Commission finds that the total assessed value of the Subject Property in Case No. 14A-016 is \$28,048 for tax year 2014.<sup>85</sup>

## 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 in Case No. 14A-016. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable in Case No. 14A-016 for tax year 2014. For all of the reasons set forth above, the County Board's determination in Case No. 14A-016 is vacated and reversed.

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations Case Nos. 14A-015, 14A-017, 14A-018, and 14A-019 for tax year 2014. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable in Case Nos. 14A-015, 14A-017, 14A-018, and 14A-019 for tax year 2014. For all of the reasons set forth above, the Taxpayer's appeals are denied in Case Nos. 14A-015, 14A-017, 14A-018, and 14A-019 for tax year 2014.

---

<sup>83</sup> E7:5 – E7:6.

<sup>84</sup> See, E7:5 – E7:6 (Wasteland valued at \$25 per acre).

<sup>85</sup> See, E7:5 – E7:6. The Commission's assessment calculation is as follows: \$17,475 (9.84 Re-calculated Dryland Acres) + \$10,448 (19.9 Grassland Acres) + \$5 (.19 Wasteland Acres) + \$120 (4.74 Re-calculated Wasteland Acres) = \$28,048. The Commission's calculation is based on conversion of 4.74 acres designated as 1D Dryland by the County to Wasteland.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Red Willow County Board of Equalization determining the value of the Subject Property parcels in Case Nos. 14A-015, 14A-017, 14A-018, and 14A-019 for tax year 2014 are affirmed.<sup>86</sup>
2. The decision of the Red Willow County Board of Equalization determining the value of the Subject Property parcel in Case No. 14A-016 for tax year 2014 is vacated and reversed.
3. The assessed value of the Subject Property parcel subject to appeal in Case No 14A-015 for tax year 2014 is: \$61,703.
4. The assessed value of the Subject Property parcel subject to appeal in Case No 14A-016 for tax year 2014 is: \$28,048.
5. The assessed value of the Subject Property parcel subject to appeal in Case No. 14A-017 for tax year 2014 is: \$108,606 (\$94,699 Land + \$13,907 Improvement = \$108,606).
6. The assessed value of the Subject Property parcel subject to appeal in Case No. 14A-018 for tax year 2014 is: \$101,294.
7. The assessed value of the Subject Property parcel subject to appeal in Case No. 14A-019 for tax year 2014 is: \$835.
8. The assessed value of the Subject Property parcel subject to appeal in Case Nos. 12A-079 and 14A-056 for tax year 2014 is: \$202,500.
9. This decision and order, if no appeal is timely filed, shall be certified to the Red Willow County Treasurer and the Red Willow County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
10. Any request for relief, by any party, which is not specifically provided for by this decision and order is denied.
11. Each party is to bear its own costs in this proceeding.
12. This decision and order shall only be applicable to tax years 2012 and 2014.

---

<sup>86</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.

13. This decision and order is effective for purposes of appeal on July 23, 2015.

Signed and Sealed: July 23, 2015.

---

Thomas D. Freimuth, Commissioner

SEAL

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

**Nancy J. Salmon, concurring,**

I concur that the determinations of the County Board in case numbers 14A 015, 14A 017, 14A 018, and 14A 019 should be affirmed, but on different reasoning. I concur with Commissioner Freimuth's opinion that case number 14A 016 should be reversed based on the reclassification of 4.74 acres as wasteland.

**I. VALUATION OF AGRICULTURAL AND HORTICULTURAL LAND**

Nebraska law requires assessing officials to value real property, other than agricultural and horticultural land, at 100% of actual value.<sup>87</sup> Agricultural and horticultural land must be assessed at 75% of actual value.<sup>88</sup> Actual value is defined by Nebraska Statutes:

Actual 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>89</sup>

---

<sup>87</sup> See, Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>88</sup> See, Neb. Rev. Stat. §77-201(2) (Reissue 2009).

<sup>89</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

“Actual value, market value, and fair market value mean exactly the same thing.”<sup>90</sup> In its definition of actual value, Nebraska Statute states that the income approach, cost approach, and sales comparison approach are accepted methods for deriving actual value.<sup>91</sup> The Nebraska Legislature, in which rests the constitutional authority to legislate and direct the manner of taxation,<sup>92</sup> has decided at different times to require the assessment of the agricultural and horticultural land using various mass appraisal methods.<sup>93</sup>

The Property Assessment Division of the Nebraska Department of Revenue is tasked by the Legislature with deriving instructions for county assessors, including but not limited to, instructions for the assessment of agricultural and horticultural land.<sup>94</sup> The Property Tax Administrator is also granted the authority to create rules and regulations consistent with Nebraska law for the purpose of furthering its statutorily derived responsibilities.<sup>95</sup> The rules and regulations of the Property Assessment Division of the Nebraska Department of Revenue state that the sales comparison approach is the preferred method for deriving the assessed value of agricultural and horticultural land.<sup>96</sup> Assessed value means the same thing as taxable value, and is defined for agricultural and horticultural land by the provisions of Nebraska Statutes section 77-201(2).<sup>97</sup>

The current law clearly states the appropriate methods for deriving the assessed value of agricultural land and horticultural land for tax year 2014. For the purposes of deriving the actual value of the Subject Property as of January 1, 2014, the methods that the Legislature previously approved for the determination of the assessed value of agricultural land and horticultural land are simply irrelevant.

The County Board adopted the County Assessor’s opinions of value which relied upon a sales comparison approach to derive an opinion of actual value and then assessed the Subject

---

<sup>90</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>91</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>92</sup> See, Neb. Const. Art. III-1 (legislative authority vested in the Legislature); See also, Neb. Const. Art. VIII-1 (Legislature provides the manner of taxation).

<sup>93</sup> See, 1985 Neb. Laws 271; See also, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>94</sup> See, Neb. Rev. Stat. §77-702(2) (Reissue 2009).

<sup>95</sup> See, Neb. Rev. Stat. §77-702(1) (Reissue 2009).

<sup>96</sup> See, 350 Neb. Admin. Code, ch. 14 §006.03 (03/09/2009).

<sup>97</sup> See, Neb. Rev. Stat. §77-131 (Reissue 2009) (definition of taxable value).

Property at 75% of that actual value.<sup>98</sup> The method utilized by the County Assessor and adopted by the County Board is consistent with Nebraska law.<sup>99</sup> Further, the Taxpayer's assertion that the income approach would derive a significantly different opinion of the actual value of the Subject Property is contrary to assessment/appraisal principles and the Legislature's definition of actual value.

The Legislature has clearly stated that both the income approach and sales comparison approach derive opinions of the actual value of real property.<sup>100</sup> Because both approaches are seeking the same target, actual value, an opinion derived through either approach, correctly performed based on sufficient data, should result in similar opinions of actual value. While the Taxpayer provided general documents concerning the income she derived from the operation of the Subject Property in tax year 2014, an opinion of actual value derived from the income approach is only concerned with the actual profit and loss of a Subject Property if it is: (1) supported by additional market data; and/or (2) not the result of individual management practices.

The operation of an agricultural business, like the operation of any other kind of business, may result in success or failure based upon the management practices of the owning entity. In order to avoid valuing the management practices of a controlling entity of a subject property, market data should be reviewed to ensure that income and expenses are typical for the market.

Further, the Taxpayer's assertions examine a single year. A typical buyer would take into consideration the profit and loss from a single year only in relation to the long term expected income from a subject property. The income approach requires that the net operating income of a subject property be capitalized to derive an opinion of actual value that accounts for all benefits and risks a potential buyer could expect to receive over the life of the ownership of a property, and not the profit and loss from an individual year.<sup>101</sup>

The evidence indicates that commodity markets are cyclical and subject to change. A potential buyer of the Subject Property would take into account not only the current year's profit

---

<sup>98</sup> See, E1-5 (County Board's Determinations); See also, E6-10 (County's Packet showing the County Assessor's calculations).

<sup>99</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>100</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>101</sup> See, The Appraisal Institute, *The Appraisal of Real Estate*, at 460-461 (14th ed. 2013) (steps for in the income approach).

and loss statement or current commodity prices, but also his/her future expectations for commodity prices and future year's returns.

The Taxpayer's request that the Commission base the assessed value of the Subject Property on one year's profit and loss statement is not clear and convincing evidence that the County Board was unreasonable or arbitrary.

Finally, I disagree with any assertions that the current law and the sales comparison approach as outlined in the Department of Revenue's rules and regulations fail to account for the productivity of different parcels of land. Agricultural and horticultural land is stratified into groups based upon the production capability of soil types.<sup>102</sup> A clear example is found in the property record card for that portion of the Subject Property's in case number 14A-015.<sup>103</sup> As indicated the soil types (designated by a four digit code) are categorized by LCG (designated by an alpha-numeric code) and then assessed as different values per acre based upon the soil capabilities of the specific soil type.<sup>104</sup> This method takes into account the productivity of the parcel compared to other parcels.

## II. CONCLUSION

For these reasons, I find that the County Board determinations in case numbers 14A 015, 14A 017, 14A 018, and 14A 019 are not arbitrary or unreasonable.

As previously stated, I concur with Commissioner Freimuth's conclusion and reasoning that 4.74 dryland in case number 14A-016 should be reclassified as waste and that the County Board's determination in that case should be reversed.

---

Nancy J. Salmon, Commissioner

---

<sup>102</sup> See, 350 Neb. Admin. Code, ch 14 (03/09/2009).

<sup>103</sup> See, E6:5.

<sup>104</sup> See, *id.*