

## LR 350 (2011): Revenue Committee Report

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## **I. Purpose of LR 350 (2011)**

The purpose of LR 350 is to “examine issues pertaining to the process and procedures used to value and equalize real property. The issues to be addressed by this study shall include, but not be limited to: (1) Whether the comparable sales guidelines in section 77-1371 should be changed or stricken; (2) An examination of how to affect intercounty equalization; and (3) Review the equalization responsibilities of the Department of Revenue and the Tax Equalization and Review Commission.”<sup>1</sup>

## **II. Introduction to “Equalization”**

### **A. What Is “Equalization”?**

Equalization is generally defined to mean “The raising or lowering of assessed values to achieve conformity with values in surrounding areas.”<sup>2</sup>

Equalization is the commonly used expression for the requirement contained in the Nebraska Constitution that property must be valued uniformly and proportionately. It means that property owners have a right to have their property valued at the same relative standard when compared to actual or market value. It does not mean that all property in a class or subclass is to be valued at the same dollar amount. For example, if similar houses are valued at 100% of their market value, based on data available to the assessor, they are “equalized”, even if their valuations are not the same dollar amount. This recognizes that a variety of factors, such as location, could cause very similar properties to have different market values, based on the actions of buyers and sellers. For agricultural property, required to be assessed at 75% of market value, if the data available to the assessor indicates that property of the same class has a fair market value of \$1,000.00 per acre in one part of the county and \$500.00 in another part of the county, the correct valuations for those properties would be \$750.00 per acre and \$375.00 per acre respectively. Although not valued at the same dollar amount, these properties are equalized because they are both assessed at the same standard: 75% of fair market value.<sup>3</sup>

The term equalization “is also applied to a similar process of leveling or adjusting the assessments of individual taxpayers, so that the property of one shall not be assessed at a higher (or lower) percentage of its market value than the property of another.”<sup>4</sup>

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<sup>1</sup> LR 350 (2011).

<sup>2</sup> *Black’s Law Dictionary*, p. 616 (9<sup>th</sup> ed. 2009).

<sup>3</sup> *Information Guide: Real Property Assessment and Taxation*, p. 2, Property Assessment Division, Nebraska Dept. of Revenue (March 2007) ([http://www.revenue.ne.gov/PAD/infoguide/real\\_property.pdf](http://www.revenue.ne.gov/PAD/infoguide/real_property.pdf)).

<sup>4</sup> *Black’s Law Dictionary*, p. 536 (7<sup>th</sup> ed.).

“Once the taxpayer has established the market value of a property in accordance with the principles [of the comparable sales approach] . . . , the next question is: what assessment will follow?”

Several states assess at 100% of market value. This, in general, means that the assessment will be levied at market value. Several other states apply an equalization rate (ratio or percentage) to the market value figure and assess at a percentage of full (100%) market value.

An equalization rate or ratio is the percentage of market value at which the property is assessed.

The taxpayer is now (after establishing market value) faced with a second question: is the equalization rate applied in the same manner to all properties on the same tax roll or is my property assessed at a higher percentage of value than other similar properties?”<sup>5</sup>

### ***B. Historical Background of Equalization***

“As early as 1799, the New York State Legislature saw the need to establish some form of equalization procedure due to the practice of assessors to under assess property to gain advantage on other tax districts. This practice of underassessment grew gradually for a number of reasons. Assessments were reduced when the states levied their rates against local assessments; assessments were reduced when the tax burden could be shifted to public utilities whose lines ran through the that taxing district; assessments were reduced to create ‘needy’ school districts where state payments of educational allowances to the local jurisdiction were based on assessed valuation. Thus developed percentage or fractional assessments, bringing us to the present situation in the United States.”<sup>6</sup>

### ***C. Critique of Fractional Assessments***

“One of the main objections to fractional assessments is that it is simply in contradiction of most state constitutions which require full value assessments. Another complaint is that the use of fractional assessments undermines the financial position of local governments and school districts by constricting the local tax and debt powers.

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Further criticism of fractional assessments centers around the fact that the assessor is forced to assume both the tax and budget policy in a given jurisdiction, which is a misdirection of political responsibility for tax load determinations. Also, fractional assessing practices aggravate the problem of intra and inter-county equalization and hinder the equitable distribution of state aid to needy school districts through competitive undervaluation.

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<sup>5</sup> *Property Taxation*, p. 140, Institute of Property Taxation (2<sup>nd</sup> edition 1993)(footnotes omitted) (hereinafter cited as *Property Taxation*).

<sup>6</sup> *Property Taxation*, pp. 140-141.

Another criticism is that the assessor uses the ratio as a means of avoiding facing the issue of value with a taxpayer. . . .

[O]ne very serious criticism of fractional assessment practices is that studies show that there are greater differences between assessed valuation and corresponding market value at lower ratios. To put it another way, the coefficient of dispersion variance is wider at lower ratios.”<sup>7</sup>

#### ***D. The Real Issue: Constitutional Prohibitions Against Discrimination***

“The real issue is not fractional assessment. The real issue is equality of treatment of all taxpayers regardless of whether the equalization rate is 100%, 50%, or 10%.”<sup>8</sup>

“The taxpayer’s right to be free from discriminatory assessments is mandated by the equal protection clause of the 14<sup>th</sup> Amendment of the United States Constitution.”<sup>9</sup>

“In *Trailer Train*, the Eighth Circuit Court of Appeals focused on the law of equal protection and notions of fairness to reach its decision. The decisions of the Nebraska Supreme Court in *Northern Natural Gas, Natural Gas Pipeline Co.*, and *Mapco* were based on these concepts and on the balance between the Legislature’s power to make reasonable classifications and the Nebraska Constitution’s requirement of uniformity.”<sup>10</sup>

#### ***E. Uniformity, Valuation, and Classification***

##### **1. Uniformity**

Article VIII, section 1, of the Nebraska Constitution sets forth the so-called “uniformity clause.” “The constitutional requirement of uniformity extends to both rate and valuation. Real property taxes may not be equalized by merely classifying property and then arbitrarily applying a given value to all properties of that classification; the mere fact that a formula is devised, by which property is nonuniformly and disproportionately assessed, does not satisfy the constitutional requirement. The object of the uniformity clause is accomplished if all of the property within a taxing jurisdiction is assessed and

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<sup>7</sup> *Property Taxation*, pp. 142-143.

<sup>8</sup> *Property Taxation*, p. 143.

<sup>9</sup> *Property Taxation*, p. 143. The U.S. Supreme Court has said that “The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment.” *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946).

<sup>10</sup> E. Brink, *A Summary: Recent Court Decisions Affecting Nebraska’s System of Property Taxation*, Legislative Research Division, Nebraska Legislature (November 1992), citing *Trailer Train Co. v. Leuenberger*, 885 F.2d 415 (8<sup>th</sup> Cir. 1988), *cert. denied* 490 U.S. 1066; *Northern Natural Gas Co. v. State Board of Equalization*, 232 Neb. 806, 443 N.W.2d 249, *cert. denied* 493 U.S. 1078; and *Natural Gas Pipeline Co. v. State Board of Equalization*, 237 Neb. 357, 466 N.W.2d 461 (1991).

taxed at a uniform value; differential tax treatment can only be based on the use or nature of the property, not upon who controls the property.”<sup>11</sup>

“The object of the uniformity clause is accomplished if all the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value. No difference in the method of determining the valuation or rate of tax to be imposed can be allowed unless separate classifications rest on some reason of public policy or some substantial difference of situation or circumstance that would naturally suggest justice or expediency of diverse legislation with respect to the objects to be classified. Evidence of “sales chasing” may justify differential treatment accorded to a particular county.”<sup>12</sup>

“It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county. Individual discrepancies and inequalities within the county must be corrected and equalized by the county board of equalization.”<sup>13</sup>

## 2. Valuation

Article VIII, section 1, of the Nebraska Constitution “requires that taxes upon tangible property shall be levied by valuation uniformly and proportionately.”<sup>14</sup>

“If the State Board of Equalization and Assessment arbitrarily undervalues a particular class of centrally assessed property, so that another class of such property is valued disproportionately higher, the valuation of the latter class of property must be lowered so that it will be equalized with the other property.”<sup>15</sup>

“Taxpayer whose property alone is taxed at actual value is entitled to have his assessment reduced to the percentage of that value at which others are taxed.”<sup>16</sup>

## 3. Classification

There are two systems of classifying property for purposes of equalization: (1) The *de jure* system of classification, which is established “pursuant to statute and through administrative implementation of the statutory standard”<sup>17</sup>; and (2) The *de facto* system of classification, “which exists in fact but which is not sanctioned by statute.”<sup>18</sup>

<sup>11</sup> See *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 606 N.W.2d 786 (2000).

<sup>12</sup> See *County of Douglas v. Nebraska Tax Equal. & Rev. Comm.*, 262 Neb. 578, 635 N.W.2d 413 (2001).

<sup>13</sup> See *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991).

<sup>14</sup> See *Lincoln Tel. & Tel. Co. v. County Board of Equalization*, 209 Neb. 465, 308 N.W.2d 515 (1981).

<sup>15</sup> See *Natural Gas Pipeline Co. v. State Bd. of Equal.*, 237 Neb. 357, 466 N.W.2d 461 (1991).

<sup>16</sup> See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

<sup>17</sup> *Property Taxation*, p. 178.

<sup>18</sup> *Property Taxation*, p. 179.

“In non-classified ratio states, assessors are required to value property at fair market value and then set the property in the assessment rolls at a *uniform* percentage of value. Failure to do this results in discrimination against the individual or group of taxpayers.”<sup>19</sup>

“A legislative classification must operate uniformly on all within a class which is reasonable.”<sup>20</sup>

“The Legislature may, for the purpose of legislating, classify persons, places, objects, or subjects, but such classification must rest upon some difference in situation or circumstance which, in reason, calls for distinctive legislation for the class.”<sup>21</sup>

“Power of classification rests with the Legislature, and courts will not interfere therewith unless classification is artificial and baseless.”<sup>22</sup>

### III. Analysis

#### A. Nebraska’s Comparable Sales Guidelines

LR 350 directs the Revenue Committee to make findings and recommendations with respect to whether the comparable sales guidelines set forth in Neb. Rev. Stat. section 77-1371 should be changed or stricken. That statute provides:

“Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. *When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:*

- (1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;
- (2) Whether zoning affected the sale price of the property;
- (3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire nearby property. Land within one mile of currently owned property shall be considered nearby property;
- (4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;
- (5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;
- (6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

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<sup>19</sup> *Property Taxation*, p. 143 (emphasis in original).

<sup>20</sup> See *Natural Gas Pipeline Co. v. State Bd. of Equal.*, 237 Neb. 357, 466 N.W.2d 461 (1991).

<sup>21</sup> See *Natural Gas Pipeline Co. v. State Bd. of Equal.*, 237 Neb. 357, 466 N.W.2d 461 (1991).

<sup>22</sup> See *Cunningham v. Douglas County*, 104 Neb. 405, 177 N.W. 742 (1920).

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis; and

(12) For agricultural land or horticultural land as defined in section 77-1359 which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.”<sup>23</sup>

Contemplate whether the foregoing comparable sales guidelines describe (1) the nature of the property sold, (2) the nature of the sales transaction, or (3) a combination of both (1) and (2).

### **1. LB 69 (2011): An Attempt to Change the Comparable Sales Guidelines in Section 77-1371**

LB 69, which was introduced during the 2011 legislative session and which is currently being held by the Revenue Committee, seeks to change the comparable sales guidelines set forth in Neb. Rev. Stat. section 77-1371.

#### **a. LB 69’s Public Hearing**

During the Revenue Committee’s public hearing on LB 69, testimony revealed that the impetus for change is that the section 77-1371 guidelines have been “a bone of contention” among taxpayers, assessors, and county boards of equalization.

Testimony also revealed that LB 69 was introduced in an effort to provide “certainty” regarding the use of the section 77-1371 guidelines, because section 77-1371 requires the guidelines to be “considered in determining what constitutes a comparable sale” and use

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<sup>23</sup> Neb. Rev. Stat. section 77-1371 (emphasis added).

of the word “considered” has raised the question whether the section 77-1371 guidelines are mandatory. That is, “shall” or “may” the section 77-1371 guidelines be used in determining what constitutes a comparable sale.

During the public hearing, two of LB 69’s proponents were asked if they saw any problems with the section 77-1371 guidelines and both proponents answered “no”.

### **b. Executive Session of the Revenue Committee on LB 69**

An amendment to LB 69 that proposed to rewrite LB 69 was offered during an executive session of the Revenue Committee on May 19, 2011. However, no vote was taken to adopt the amendment or advance the bill from committee.

One reason LB 69 did not advance from committee was because the proposed amendment to rewrite the bill retained the provision that proposes to strike the last paragraph of section 77-1371 which gives the Property Tax Administrator authority to issue guidelines for determining what constitutes a comparable sale that take into account the 12 “factors” listed in section 77-1371 “and other relevant factors prescribed by the Property Tax Administrator”, such as the International Association of Assessing Officers (IAAO) “Sales Verification” guidelines set forth in the IAAO’s publication entitled *Standard on Verification and Adjustment of Sales*.<sup>24</sup>

A number of committee members expressed concern that no one who testified during the public hearing on LB 69 addressed the “substantive change” and “possible unintended consequences” that could flow from eliminating the Property Tax Administrator’s statutory authority to issue guidelines for determining what constitutes a comparable sale that take into account “other relevant factors,” such as the IAAO’s *Standard on Verification and Adjustment of Sales*.

In light of those concerns, the committee decided to hold the bill so that an interim study to examine issues pertaining to the process and procedures used to value and equalize real property could be conducted, including an examination of the issue whether the comparable sales guidelines in section 77-1371 should be changed or stricken.

## ***B. How to Affect Intercounty Equalization***

### **1. The Equalization Process Generally**

“The process of equalizing assessments or taxes, as performed by ‘boards of equalization’ in various states, consists in comparing the assessments made by the local officers of the various counties or other taxing districts within the jurisdiction of the board and reducing them to a common and uniform basis, increasing or diminishing by such percentage as may be necessary, so as to bring about, within the entire territory affected, a uniform and equal ratio between the assessed value and the actual cash value of property.”<sup>25</sup>

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<sup>24</sup> The IAAO’s guidelines include, among other things, guidance for dealing with Internal Revenue Code section 1031 like-kind exchanges, multi-parcel sales, and sales between adjoining property owners. *Appendix A* contains a copy of “Sales Verification”, *Standard on Verification and Adjustment of Sales*, pp. 8-13, IAAO (November 2010).

<sup>25</sup> *Black’s Law Dictionary*, p. 536 (7<sup>th</sup> ed.).

“Equalization boards have been established in many States. The major function of such boards is to bring assessments made in separate taxing subdivisions of the State into line with each other for a variety of purposes. The problem of equalization has been beset with a great many difficulties. As the secretary of one equalization board said, ‘inter-county equalization is like a mule—no hope of progeny and no pride in ancestry.’”<sup>26</sup>

## **2. The Equalization Process in Nebraska**

### **a. How is Property Equalized in Nebraska?**

“The Tax Equalization and Review Commission (Commission) has the responsibility to annually equalize the values of all real property. The Commission has the authority to raise or lower by a percentage the valuation of a class or subclass of property in any county or taxing jurisdiction for the purpose of achieving intercounty equalization. On or before June 6, the assessor shall publish the assessment ratios as determined by the Commission for his or her county.

After equalization of real property by class or subclass by the Commission, the county board of equalization has the duty to equalize the valuation of individual parcels of real property in the county. On or before July 26, the county board of equalization may petition the Commission to further consider an adjustment to a class or subclass of real property within the county.”<sup>27</sup>

### ***C. Equalization Responsibilities of the Nebraska Department of Revenue***

#### **1. Nebraska Statutes**

- “It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.”<sup>28</sup>
- “All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless

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<sup>26</sup> Hellerstein and Hellerstein, *State and Local Taxation*, p. 195 (5<sup>th</sup> ed.).

<sup>27</sup> *Information Guide: Real Property Assessment and Taxation*, p. 2, Property Assessment Division, Nebraska Dept. of Revenue (March 2007) ([http://www.revenue.ne.gov/PAD/infoguide/real\\_property.pdf](http://www.revenue.ne.gov/PAD/infoguide/real_property.pdf)).

<sup>28</sup> Neb. Rev. Stat. section 77-1327(1).

the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.”<sup>29</sup>

- “The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.”<sup>30</sup>
  - “An assessment/sales ratio is a tool used under professionally accepted mass appraisal methods to measure and evaluate the level and uniformity of assessed values. The ratio is determined by dividing the assessed value of a parcel of real property by the sales price of that parcel. The phrase may also refer to the total assessed value of all real property parcels of a particular class or subclass of real property sold during a particular time frame divided by the total sales price of all real property parcels of that class or subclass sold during that same time frame. The assessment/sales ratio is expressed in terms of a percentage.”<sup>31</sup>
- “For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.”<sup>32</sup>
- “County assessors and other taxing officials shall electronically report data on the assessed valuation and other features of the property assessment process for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts and other political subdivisions, as well as intercounty comparisons of assessed valuation, including school districts and other political subdivisions. The Property Tax Administrator shall

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<sup>29</sup> Neb. Rev. Stat. Section 77-1327(2).

<sup>30</sup> Neb. Rev. Stat. Section 77-1327(3).

<sup>31</sup> 442 Neb. Admin. Code, chapter 9, section 002.02.

<sup>32</sup> Neb. Rev. Stat. section 77-1327(4).

include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.”<sup>33</sup>

- “On or before 19 days after the final filing due date for the abstract of assessment for real property pursuant to Neb. Rev. Stat. section 77-1514, the Property Tax Administrator must prepare and deliver to [TERC] and to each county assessor his or her annual reports and opinions. Beginning January 1, 2014, for any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the reports or opinions shall be prepared and delivered on or before fifteen days following such final filing due date.”<sup>34</sup>
- “The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing [TERC] of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.”<sup>35</sup>
- “In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by [TERC].”<sup>36</sup> The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to [TERC].<sup>37</sup>
- “The Property Tax Administrator must notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation must be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by Neb. Rev. Stat. section 77-1327. The Tax

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<sup>33</sup> Neb. Rev. Stat. section 77-1327(5), as amended by Laws 2011, LB 210, section 5 (operative August 27, 2011).

<sup>34</sup> Neb. Rev. Stat. section 77-5027(2), as amended by Laws 2011, LB 384, section 35 (operative August 27, 2011).

<sup>35</sup> Neb. Rev. Stat. section 77-5027(3).

<sup>36</sup> Neb. Rev. Stat. section 77-5027(4).

<sup>37</sup> Neb. Rev. Stat. section 77-5027(5).

Commissioner must adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes.”<sup>38</sup>

#### ***D. Equalization Responsibilities of the TERC***

##### **1. Nebraska Constitution**

The Nebraska Constitution gives the Tax Equalization and Review Commission (TERC) “power to review *and equalize* assessments of property for taxation within the state. . . .”<sup>39</sup>

##### **2. Nebraska Statutes**

Among its other statutory powers and duties, TERC “has the power and duty to hear and determine appeals of: (1) Decisions of any county board of equalization *equalizing* the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately. . . .”<sup>40</sup>

##### **a. Applicable Nebraska Statutes and TERC Regulations**

A number of Nebraska statutes and administrative regulations set forth TERC’s equalization responsibilities. Those laws are regularly cited as the “Applicable Law” by TERC in its written equalization decisions.<sup>41</sup> Nebraska’s Property Tax Administrator and a county are always the parties in a TERC equalization proceeding.

- TERC must meet annually to equalize the assessed value, or special value of all real property as submitted by the county assessors on the abstracts of assessment and equalize the values of real property which is valued by the state. TERC has power to “recess” from time to time until the equalization process is complete and its equalization hearings can be held by means of videoconference “or telephone conference.”<sup>42</sup>

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<sup>38</sup> Neb. Rev. Stat. section 79-1016(2)(emphasis added).

<sup>39</sup> Neb. Const., art. IV, section 28 (emphasis added).

<sup>40</sup> Neb. Rev. Stat. section 77-5007(1)(emphasis added).

<sup>41</sup> See, e.g., *In the Matter of the Equalization of Value of Real Property Within Boone County, Nebraska, for Tax Year 2011*, pp. 2-4, County Number 6, Findings and Orders (No Show Cause Hearing), Nebraska Tax Equalization and Review Commission (May 12, 2011); *In the Matter of the Equalization of Value of Real Property Within Douglas County, Nebraska, for Tax Year 2011*, County Number 28, Findings and Orders (No Show Cause Hearing), pp. 2-4, Nebraska Tax Equalization and Review Commission (May 12, 2011)(same); and *In the Matter of the Equalization of Value of Real Property Within Lancaster County, Nebraska, for Tax Year 2011*, County Number 55, Findings and Orders (No Show Cause Hearing), pp. 2-4, Nebraska Tax Equalization and Review Commission (May 12, 2011)(same).

<sup>42</sup> Neb. Rev. Stat. section 77-5022, as amended by Laws 2011, LB 384, section 33.

- TERC must, pursuant to Neb. Rev. Stat. section 77-5026, raise or lower the valuation of a class or subclass of real property as necessary to achieve equalization.<sup>43</sup>
- Pursuant to Neb. Rev. Stat. section 77-5023, if TERC finds that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, it must issue a notice to the counties which it deems either undervalued or overvalued and must set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice—unless waived—must be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county can appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county can waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, TERC can receive testimony from any interested person.<sup>44</sup>
- To achieve equalization, TERC must—pursuant to Neb. Rev. Stat. section 77-5022— increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.<sup>45</sup>
- An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment.<sup>46</sup>
  - TERC’s “preferred ‘established indicator of central tendency’ is the median.”<sup>47</sup>
  - The acceptable ratio range for the median of the assessment/sales ratio is from 69% to 75% of actual or fair market value for the class and subclasses of agricultural land and horticultural land not receiving special valuation pursuant to Neb. Rev. Stat. section 77-1344; 69% to 75% of special valuation for the class and subclasses of agricultural land and horticultural land receiving special valuation pursuant to Neb. Rev. Stat. section 77-1344; and 92% to 100% of actual or fair market value for all other classes and subclasses of real property.<sup>48</sup>

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<sup>43</sup> Neb. Rev. Stat. Section 77-5027(1).

<sup>44</sup> Neb. Rev. Stat. section 77-5026.

<sup>45</sup> Neb. Rev. Stat. section 77-5023(1).

<sup>46</sup> Neb. Rev. Stat. section 77-5023(2).

<sup>47</sup> 442, Neb. Admin. Code, chapter 9, section 004 (June 11, 2011).

<sup>48</sup> Neb. Rev. Stat. section 77-5023(2).

- Whether or not the level of value determined by TERC falls within the acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.<sup>49</sup>
- The acceptable range for the “coefficient of dispersion” (COD) is: 15 percent or less for residential real property; 20 percent or less for agricultural land; 20 percent or less for commercial property; and 20 percent or less for vacant land and other classes of property.<sup>50</sup>
- The acceptable range for the “price related differential” (PRD) for all classes and subclasses of real property is .98 to 1.03.<sup>51</sup>
- The annual notice that TERC must publish in a newspaper of general circulation in the State of Nebraska of the time and place of its first statewide equalization meeting must “contain a statement advising that any petition brought by a county board of equalization pursuant to section 77-1504.01 to adjust the value of a class or subclass of real property will be heard between July 26 and August 10 at a date, time, and place as provided in the agenda maintained by the commission.”<sup>52</sup>

#### **b. TERC’s Review of Assessment Practices**

Additionally, TERC’s written decisions in statewide equalization proceedings regularly provide “A Review of Assessment Practices” in each county. For example, *In the Matter of the Equalization of Value of Real Property Within Douglas County, Nebraska, for Tax Year 2011*, TERC wrote that:

“The level of value for any class or subclass of real property is indicated by its median assessment-sales ratio unless that ratio is deemed unreliable, the sample from which the ratio is drawn is not representative of the class or subclass, or the level of value has been determined based on other generally accepted mass appraisal techniques.

The uniformity and proportionality of assessments (the “quality” of assessments), under professionally accepted mass appraisal methods, are measured through the use of the Coefficient of Dispersion (“COD”) and the Price Related Differential (“PRD”).”<sup>53</sup>

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<sup>49</sup> Neb. Rev. Stat. Section 77-5023(5).

<sup>50</sup> 442 Neb. Admin. Code, chapter. 9, section 005.02 (June 11, 2011).

<sup>51</sup> 442 Neb. Admin. Code, chapter 9, section 005.03 (June 11, 2011).

<sup>52</sup> Neb. Rev. Stat. section 77-5024.01, as amended by Laws 2011, LB 384, section 34 (operative August 27, 2011.)

<sup>53</sup> *In the Matter of the Equalization of Value of Real Property Within Douglas County, Nebraska, for Tax Year 2011*, County Number 28, Findings and Orders (No Show Cause Hearing), pp. 1-2, Nebraska Tax Equalization and Review Commission (May 12, 2011). See also, *In the Matter of the Equalization of Value*

#### **IV. Third-Party Study of the Methodology Used by the Property Tax Administrator for Reporting and Giving Opinions on the Need for Equalization Adjustments for Agricultural Land**

The following material is the Executive Summary of the independent third-party study entitled *Review of the Expanded Agricultural Land Analysis Methodology*<sup>54</sup>:

##### **“1. Executive Summary**

Almy, Gloudemans, Jacobs & Denne (AGJD) was selected to review the methodology adopted by the Property Tax Administrator (PTA) for reporting and opining on the need for equalization adjustments to county assessments of agricultural land, which adjustments may be ordered by the Tax Equalization and Review Commission. Recent changes to those methods had engendered unresolved questions and some controversy, resulting in a desire on the part of all stakeholders to resolve the issues before beginning work on the next cycle of data analysis. This report describes the various issues raised, the evidence and other considerations surrounding them, and the conclusions we reached. Our conclusions were based on our discussions with stakeholders, our familiarity with authoritative sources, including the IAAO *Standard on Ratio Studies* (2010) and the practices of other similar jurisdictions, and our analyses of the questioned methodology and supporting data for a sample of six agricultural market areas.

Section 2 of this report discusses the issue of agricultural land sales that include property other than land alone. Section 3 addresses the procedures that have been adopted by the Property Assessment Division of the Department of Revenue (the Division) for adding outof-county sales and removing sales in order to make the sample more representative. Sections 1.1 and 1.2 below summarize our main recommendations in each area.

##### **1.1 Agricultural Sales with Minimal Value Contributions Apart From Land**

Sales of agricultural parcels where land, rather than improvements, constitutes at least 95 percent of the assessed value are treated by default in the analyses of the Division as if there were no contributory value associated with the minor improvements. Some local assessors oppose this policy and believe that if such sales are to be used the sale price should be adjusted using the prior improvement assessment. We find the Division’s policy to be fundamentally reasonable. We suggest, however, that the current policy of a rebuttable presumption of nil value be clarified and a mechanism be developed to facilitate an efficient means by which assessors can rebut it and provide the estimate of contributory value required under best practices.

##### **1.2 Methodology for Augmenting Minimal Land Sales in Measuring Value**

The Division’s methods of remedying small sample sizes have been criticized for being subject to bias, illegitimate, unnecessary, and otherwise unacceptable. We find there to be no grounds for rejecting the methods on their face. We believe that the perceived potential for bias was ill informed and that the sample-expansion efforts were well placed. We also

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*of Real Property Within Boone County, Nebraska, for Tax Year 2011*, pp. 2-4, County Number 6, Findings and Orders (No Show Cause Hearing), Nebraska Tax Equalization and Review Commission (May 12, 2011)(same); and *In the Matter of the Equalization of Value of Real Property Within Lancaster County, Nebraska, for Tax Year 2011*, County Number 55, Findings and Orders (No Show Cause Hearing), pp. 2-4, Nebraska Tax Equalization and Review Commission (May 12, 2011)(same).

<sup>54</sup> *Review of the Expanded Agricultural Land Analysis Methodology*, Almy, Gloudemans, Jacobs & Denne, Property Taxation and Assessment Consultants, Phoenix, Arizona (October 31, 2011). **Appendix B** contains a copy of that study.

believe that the methodology can be improved in several important respects. The chief improvements we believe can and should be made are to implement weighting as an alternative to random deletions when sales samples contain over-represented strata, to consider the development of a statewide CAMA model to enable market-based value estimates of virtually all agricultural land, to implement a practice of adjusting sales for time, and to develop more formal decision rules regarding sample expansion efforts and thereby clarify the rationale and legitimacy of the procedures.”<sup>55</sup>

That study concluded by making the following five recommendations:

“3.3.1 We recommend that significant attention continue to be paid to issues of sample size and representation, and that any pressures to accept the potentially erratic results of small unrepresentative samples in the name of “letting the chips fall where they may” be resisted.

3.3.2 We recommend that serious consideration be given to developing valid adjustments for changes in price levels between the date of sale and the effective date of the Property Tax Administrator’s (PTA’s) Report and Opinion.

3.3.3 We recommend that consideration be given to weighting sample elements in preference to deleting them for purposes of increasing a sample’s representativeness.

3.3.4 We recommend that consideration be given to developing a statewide CAMA model for agricultural land incorporating variables for time of sale, LCG/MLU considerations, and locational factors not constrained by political boundaries not of economic significance. Such a model could be used to develop market-based appraisals for virtually all agricultural land in each county, thus providing nearly complete coverage and avoiding issues of proportionality among MLUs in sales samples.

3.3.5 We recommend that explicit decision rules be developed to guide the use of out-of county sales and clarify their legitimacy in terms of target sample size and statistical reliability. Target sample sizes would ideally derive from sample size formulas, but rules of thumb guided by statistical principles and practical criteria may be more realistic.”<sup>56</sup>

## **V. LR 350 Public Hearing: November 18, 2011**

On November 18, 2011, the Revenue Committee held a public hearing concerning LR 350 at 10:00 am in Room 1525 of the Nebraska State Capitol. Eight individuals testified during that hearing.<sup>57</sup> The following material provides select highlights of that hearing.

Most of the hearing was devoted to the issue of using the comparable sales method for determining the actual value (i.e., fair market value) of a “farm home site” (as defined in Neb. Rev. Stat. § 77-1359) for purposes of so-called “greenbelt” valuation pursuant to

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<sup>55</sup> Id., p. 1.

<sup>56</sup> Id., pp. 11-12.

<sup>57</sup> A written transcript of the LR 350 public hearing held on November 18, 2011, is available from the Clerk of the Legislature’s Transcribers (402) 471-2119. A copy of all exhibits submitted during that hearing is available from the Committee Clerk of the Revenue Committee. The appendices to this report contain some, but not all, of those exhibits.

Neb. Rev. Stat. §§ 77-1359 to 77-1363. Testimony on that issue focused primarily on the Sarpy County assessor's determination that residential land located in a platted and zoned subdivision that included a lake was comparable land for purposes of determining the value of land beneath a farm home site. One of the taxpayers—Gerald Vinduska—who was adversely affected by that assessor's determination appealed the 2009 valuation of his farm home site to Nebraska's Tax Equalization and Review Commission (TERC) which increased the value of the taxpayer's farm home site above the value assigned to it by the Sarpy County assessor and the Sarpy County Board of Equalization because, in TERC's view, the best evidence of the value of the taxpayer's farm home site was presented by an appraiser hired by the Sarpy County assessor.<sup>58</sup>

The Seward County Assessor testified with respect to “the minimally improved process and expanded agricultural land analysis process being used to establish a level of value for agricultural land for statewide equalization.”<sup>59</sup>

Ruth Sorensen, Nebraska's Property Tax Administrator, testified that the comparable sales guidelines set forth in Neb. Rev. Stat. § 77-1371 either “need to be updated” or repealed and replaced with “the more stringent guidelines promulgated by the Department which must be followed by the county assessors when they determine whether a sale is a qualified sale.”<sup>60</sup> Her written testimony also states that “Intercounty equalization allows for the use of a larger sample size from adjoining counties with similar market characteristics” which “results in distributing valuation more uniformly and proportionately. . . . Without intercounty equalization, disproportionate valuation can occur.”<sup>61</sup>

## VI. Recommendations

The Revenue Committee recommends the introduction of a bill to amend Neb. Rev. Stat. § 77-1371 to provide that residential land located in a platted and zoned subdivision is **not** comparable to land that is part of a “farm home site” for purposes of special valuation under Neb. Rev. Stat. §§ 77-1359 to 77-1363. (Neb. Rev. Stat. § 77-1359 defines “farm home site” to mean “not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road. . . .”)

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<sup>58</sup> *Appendix C* contains a copy of *Jean G. Vinduska, Trustee, Jean G. Vinduska, Rev. Trust, Appellant, v. Sarpy County Board of Equalization Appellee*, Nebraska Tax Equalization and Review Commission, Case No. 09SV008 (June 1, 2011). *Appendix D* contains a copy of a similar case, *Connie L. Anderson, Appellant, v. Sarpy County Board of Equalization, Appellee*, Nebraska Tax Equalization and Review Commission, Case No. 09SV007 (June 1, 2011).

<sup>59</sup> Written testimony of Marilyn Hladky, Seward County Assessor, which was submitted as an exhibit during the LR 350 public hearing. *Appendix E* contains a copy.

<sup>60</sup> Written testimony of Ruth Sorensen, Nebraska Property Tax Administrator, which was submitted as an exhibit during the LR 350 public hearing. *Appendix F* contains a copy.

<sup>61</sup> Id

**APPENDIX A**

# **Standard on Verification and Adjustment of Sales**

Approved November 2010

## **INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS**

The assessment standards set forth herein represent a consensus in the assessing profession and have been adopted by the Executive Board of the International Association of Assessing Officers. The objective of these standards is to provide a systematic means by which concerned assessing officers can improve and standardize the operation of their offices. The standards presented here are advisory in nature and the use of or compliance with such standards is purely voluntary. If any portion of these standards is found to be in conflict with the Uniform Standards of Professional Appraisal Practice (USPAP) or state laws, USPAP and state laws shall govern.

## **Acknowledgments**

At the time of the adoption of the standard by the IAAO Executive Board, the IAAO Technical Standards Committee was composed of Joe Hapgood, CAE, chair; Nancy C. Tomberlin; Bill Marchand; Robert Gloude-mans; Mary Reavey; Dennis Deegear; and Chris Bennett, staff liaison.

The initial draft was started in 2009. At that time the IAAO Technical Standards Committee was composed of Chair Nancy C. Tomberlin; Joe Hapgood, CAE; Alan S. Dornfest, AAS; Bill Marchand; and Mary Reavey.

The Technical Standards Committee recognizes the contributions of Peter Davis and Richard Almy who provided valuable comments during exposure of the standard.

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#### 4.7.5 Sealed Bids

Verification of sales of properties that are marketed and sold by sealed bids should follow the guidelines for property that is sold by auction (see Section 5.4.5); it is also important to discover how many bids were received. If only one bid was offered and no fee appraisal was made on the property, the sale should not be considered a valid transaction. If a fee appraisal was made on the property and the bid was within a typical range, the sale may be considered a valid transaction especially when sample sizes are small.

#### 4.7.6 Word-of-Mouth

Word-of-mouth marketing is typically more prevalent in rural areas. This method of marketing real property requires verification to answer the following questions:

- How did the buyer discover the property was for sale?
- How widely was the property marketed?
- Is word-of-mouth typical exposure for the area?
- How was the sale price determined?
- Was a fee appraisal made on the property, and if so, what was the amount?
- What was the condition of the property at the time of sale?
- Was the seller actively marketing the property at the time of sale?

Since the buyer would not be able to provide an answer to the majority of these questions, the seller is the best source of information.

#### 4.8 Time on the Market

Sales of properties that have been exposed to the open market too long, not long enough, or not at all may not represent market value. The jurisdiction should monitor typical marketing time. The typical marketing time may be longer in a depressed market.

#### 4.9 Interest Transferred

A transaction that conveys the full rights of ownership to a property is known as a *fee simple* transfer. Fee simple is defined in land ownership as the complete interest in a property, subject only to governmental powers such as eminent domain. Transfers that convey less than full interest are rarely usable in mass appraisal or in ratio studies without adjustments, unless the appraised value and sale price reflect the same ownership rights. Examples of partial interest transfers include sales involving life estates, encumbered leases, fractional interest, and mineral rights.

#### 4.10 Type and Terms of Financing

Certain types of financing can affect the sale price. The information needed to determine the amount of adjustment to the sale price includes the amount of the down payment, type of loan, interest rate, amortization provisions, and the type and value of any trade. It is also important to know whether the sale conveys title to the property or whether it is a land contract, in which title is not conveyed until sometime in the future, typically several years.

#### 4.11 Personal Property

The sales verification questionnaire should note the type and value of any significant personal property (both tangible and intangible listed separately) included in the sale price.

#### 4.12 Date of Transfer

This is the date on which the sale was closed or completed. Not all jurisdictions require recordation of deeds; therefore, the deed date should be considered the most reliable date of sale, not the recording date. If a copy of the deed is not available, the date on the sales verification questionnaire should be used.

#### 4.13 Deed Instrument Number

The deed instrument or document number, as well as the record or deed book and page, indicates where the deed is located in the official records and is an important asset in researching sales and leases.

#### 4.14 Unique Sale Number

A unique sale number can tie a sale validation questionnaire to a particular parcel and eliminate confusion if the parcel sells more than once. A unique number should be assigned to sales verification questionnaires completed at the time of recordation of the deed. Legislation requiring that the sales verification questionnaire be provided at the time of deed recordation provides leverage in ensuring the form is completed properly, a unique number is applied, and each transfer is accounted for. For electronic reporting to oversight agencies, this unique number could then be tied to the jurisdiction's identification number and parcel identification number.

### 5. Sales Verification

Sales should be verified to determine whether they reflect the market value of the real property transferred. Specific objectives for sales verification include but are not limited to the following:

- Sale prices reflect only the market value of the real property transferred and not the value of personal property, financing, or leases.



- Sales occurred during the time frame being tested or modeled.
- Sales are excluded only when they fail to meet the requirements of an open-market, arm's-length transaction.

All sales meeting the definition of market value should be included as valid transactions unless one of the following two conditions exists:

- Data for the sale are incomplete, unverifiable, or suspect.
- The sale fails to pass one or more specific tests of acceptability.

Although all sales should normally be verified for use in modeling and appraisal analyses, for ratio studies a subset of sales can be selected for verification if the verified sales provide a sufficiently representative sample for purposes of the study (see *Standard on Ratio Studies* [IAAO 2010] for discussion on representative samples).

The position should be taken that all sales are candidates as valid sales unless sufficient information can be documented to show otherwise. If sales are excluded for ratio studies without substantiation, the study may appear to be subjective. Reason codes may be established for valid and invalid sales for both ratio studies and model calibration.

No single set of sales screening rules or recommendations can be universally applicable for all uses of sales data or under all conditions. Sales verification guidelines and procedures should be consistent with the provisions of the value definition applicable to the jurisdiction. Assessors should use their judgment, but they should not be arbitrary. For uniform judgments, verification procedures should be in writing. All personnel should be thoroughly familiar with these procedures as well as with underlying real estate principles (Tomberlin 2001).

### 5.1 Importance of Sales Verification

Sales data are needed for the valuation process and for sales ratio studies. The reliability of any valuation model or sales ratio study depends on the quality and quantity of its data. Sales data should be collected, edited, and adjusted to obtain valid indicators of market value. Sales data should be verified by contacting a party to the sale (buyer, seller, or other knowledgeable party) when there is a question or an answer is unclear on a sales questionnaire completed prior to the recordation. In general, the fewer the sales, the less common or more complex the property, and the more atypical the sale price, the greater the effort should be to confirm the particulars of the sale.

### 5.2 Methods of Sales Verification

In general, the completeness and accuracy of sales data are best confirmed by requesting the particulars of a sale

from parties to the sale. Historically, people consent to interviews if they know what is expected of them; understand the importance of the request; and, are treated with respect. When sales data are not available on transfer documents, disclosure documents, are incomplete, or require further verification, parties to the transaction may be contacted using the following methods.

- Sales verification questionnaires (other than the mandatory disclosure questionnaire completed at time of sale)
- Telephone interviews
- Personal interviews.

Comprehensive sales verification questionnaires reduce the number of follow-up verifications required but do not totally eliminate them. Sales information should never be considered absolutely trustworthy. An ideal sales verification system would provide a mechanism for the accurate and timely completion of the sales verification questionnaire. One of the above methods should be used when a question remains unanswered or there are other questions regarding a sale.

For both telephone and personal interviews, it may be necessary to provide verification of the purpose of the interview. The contact person should be ready to supply names and a phone number of a supervisor or human resource contact who can verify their employment and the purpose of the contact.

Preparing a list of basic questions for staff to ask during the interview ensures uniformity and consistency and often leads to discovery of problems regarding the transaction. Specific questions should be prepared and staff trained for sales involving the following (see Appendix B for examples of questions for specific situations):

- Adjoining property owner
- Auctions
- Internet marketing
- Leasebacks
- Personal property
- Property characteristic changes
- Related parties
- Sealed bids
- Uninformed buyers and sellers
- Word-of-mouth
- IRS 1031 Exchanges.

#### 5.2.1 Additional Sales Verification Questionnaires (Other Than Mandatory Disclosure Questionnaires Completed at the Time of Sale)

While mailing sales verification questionnaires may be the least expensive method of obtaining or verifying in-

## Standard on Verification and Adjustment of Sales—2010

formation subsequent to the sale, there are several disadvantages, as follows:

- Response is not immediate.
- Additional contact may be needed.
- Information is limited to what is stated on the sales verification questionnaire.
- Printing and mailing costs are incurred.

Mailed sales verification questionnaires should be as concise as possible and should include the following:

- Postage-paid return envelope
- Official stationery
- Purpose of the sales verification questionnaire
- Contact person (name, telephone number and e-mail address for additional information)
- Authorized signature (of person completing the questionnaire)

Specialized questionnaires may be designed for a specific type of property or situation such as an income producing property or a property that sells with atypical financing. Specialized questionnaires can be developed for numerous situations; however, all should follow the guidelines for the regular questionnaire suggested above.

### 5.2.2 Telephone Interviews

Telephone interviews provide quick responses and the opportunity for immediate clarification. Disadvantages are as follows:

- Inability to prove caller's identity
- Need for trained staff
- Difficulty in reaching the party to the sale.

An opening script should be written for telephone interviews. Always state your name, the office you represent, and the purpose of the telephone call. If the individual is unable to talk, ask for a specific time that would be more convenient. It is extremely important to use simple conversational words and avoid slang and industry jargon. Interviews should be short, courteous, and to the point.

### 5.2.3 Personal Interviews

The disadvantages of the in-person interview are they are the most costly and qualified analysts or appraisers should perform this task. However, they are most effective for the following reasons:

- Refusals less frequent
- Information more reliable
- More unusual or special considerations revealed.

For personal interviews it is critical to be on time. An identification badge or business card should be present-

ed upon introduction. All paperwork and forms should be available and in order before the interview begins. The style and tone of the conversation should be geared to the interview setting. It can sometimes be helpful to establish rapport through brief small talk. Maintain eye contact, smile, and be friendly and respectful throughout the conversation.

## 5.3 Sales Generally Considered Invalid

The following types of sales are often found to be invalid and can be excluded unless a larger sample size is needed. If a larger sample size is needed, these sales require verification.

- Sales involving government agencies
- Sales involving charitable, religious, or educational institutions
- Sales involving financial institutions as buyer or seller
- Sales between relatives or between corporate affiliates
- Sales settling an estate
- Forced sales resulting from a judicial order
- Sales of doubtful title

### 5.3.1 Sales Involving Government Agencies

Sales to government agencies can involve an element of compulsion and often occur at prices higher than would otherwise be expected. When the governmental agency is the seller, values typically fall on the low end of the value range. The latter should not be considered in model calibration or ratio studies unless an analysis indicates governmental sales have affected the market in specific market areas or neighborhoods. Each sale in this category should be thoroughly researched prior to use. See Appendix C for a listing of some of the government agencies in this category.

### 5.3.2 Sales Involving Charitable, Religious or Educational Institutions

A sale to such an organization can involve an element of philanthropy, and a sale by such an organization can involve a nominal consideration or restrictive covenants. These sales often involve partial gifts and therefore are generally not representative of market value.

### 5.3.3 Sales Involving Financial Institution as Buyer

These sales are often made in lieu of foreclosure and are not exposed to the open market. However, open-market sales in which a financial institution is a willing buyer, such as the purchase of vacant land for a branch bank, may be considered potentially valid transactions.

### 5.3.4 Sales Involving Financial Institution as Seller

A foreclosure is not a sale but the legal process by which a lien on a property is enforced. The majority of the sales in which the financial institution is the seller are properties that were formerly foreclosed on by the financial institution. Also, they are easily identified because the seller is the financial institution. These sales typically are on the low side of the value range because the financial institution is highly motivated to sell and may be required by banking regulations to remove the property from its books. The longer the property is carried on the books by the financial institution, the lower the asking price is likely to be. If the financial institution was ordered by banking regulators to dispose of the property regardless of the sale price, the sale should not be included as a valid transaction.

Sales in which a financial institution is the seller typically should be considered as potentially valid for model calibration and ratio studies if they comprise more than 20 percent of sales in a specific market area. Care should be taken in validating this type of sale to account for changes in property characteristics (see Section 5.10). Any properties that have been vandalized should be excluded.

### 5.3.5 Sales between Relatives or Corporate Affiliates

Sales between close relatives (parents, children, aunts, uncles, nephews, nieces, grandparents) or corporate affiliates are usually non-open-market transactions. If the following factors apply during the follow-up verification, the sale may be considered a valid transaction.

- The property was exposed on the open market.
- The asking and selling price was within the range that any party purchasing the property would be expected to pay.
- The sale meets all other criteria of being an open-market, arm's-length transaction.

### 5.3.6 Sales Settling an Estate

A conveyance by an executor or trustee under powers granted in a will may not represent fair market value, particularly if the sale takes place soon after the will has been filed and admitted to probate in order to satisfy the decedent's debts or the wishes of an heir.

### 5.3.7 Forced Sales Resulting from a Judicial Order

These sales should never be considered for model calibration or ratio studies. The seller in these sales is usually a sheriff, receiver, or other court officer.

### 5.3.8 Sales of Doubtful Title

Sales in which title is in doubt tend to be below market value. When a sale is made on other than a warranty

deed, there is a question of whether the title is merchantable. A quitclaim deed is an example.

## 5.4 Sales with Special Conditions

Sales with special conditions can be open-market transactions; however, they should be verified thoroughly. The following are types of sales with special conditions.

- Trades
- Partial interests
- Land contracts
- Incomplete or unbuilt common property
- Auctions

### 5.4.1 Trades

In a trade, the buyer gives the seller one or more items of real or personal property as all or part of the full consideration. If the sale is a pure trade with the seller receiving no money or securities, the sale should be excluded from analysis. If the sale involves both money and traded property, it may be possible to include the sale in the analysis if the value of the traded property is stipulated, can be estimated with accuracy, or is small in comparison to the total consideration. However, transactions involving trades should be excluded from the analysis whenever possible, particularly when the value of the traded property is substantial.

### 5.4.2 Partial Interest

A sale involving a conveyance of less than the full interest in a property should be excluded as a valid transaction. Sometimes all the partial interest owners of a property may agree to syndication and sell their portions of the estate to a buyer (typically on the same day). However, the sum of all the sale prices may not necessarily indicate the market value of the whole property. These transfers should not be used as valid sales without thorough testing, analysis, and documentation.

### 5.4.3 Land Contracts

Land contracts (also known as contracts for deeds) and other installment purchase agreements in which title is not transferred until the contract is fulfilled require careful analysis. Deeds in fulfillment of a land contract often reflect market conditions several years in the past, and such dated information should not be considered. Sales data from land contracts also can reflect the value of the financing arrangements. In such instances, if the transaction is recent, the sale price should be adjusted for financing, if warranted, and included as a valid transaction (see Section 7.4.4). Because the contract itself often is not recorded, discovery of these sales is difficult until the deed is finally recorded. The sale then is likely to be too old to be used.

#### 5.4.4 Incomplete or Unbuilt Common Property

Sales of condominium units and of units in planned unit developments or vacation resorts often include an interest in common elements (e.g., golf courses, clubhouses, or swimming pools) that may not exist or be usable on the date of sale or on the assessment date. Sales of such properties should be examined to determine whether prices might be influenced by promises to add or complete common elements at some later date. Sales whose prices are influenced by such promises should be excluded or the sales price should be adjusted to reflect only the value of the improvements or amenities in existence on the assessment date.

#### 5.4.5 Auction Sales

In general, auction sales of real property tend to be at the lower end of the price spectrum and are more prevalent in rural areas. Absolute auctions do not have a low bid clause or right of refusal and typically are advertised as absolute auctions. The property is sold to the highest bidder whatever that bid may be. All absolute auctions should be considered invalid. Before auction sales should be considered as valid transactions, the following criteria should be met.

- Was the auction well-advertised?
- Was the auction well-attended?
- Did the seller have a minimum bid or the right of refusal on all bids (with reserve)?

#### 5.5 Acquisitions or Divestments by Large Property Owners

Acquisitions or divestments by large corporations, pension funds, or real estate investment trust (REITs) that involve multiple parcels typically should not be considered for analysis.

#### 5.6 Multiple-Parcel Sales

A multiple-parcel sale is a transaction involving more than one parcel of real property. These transactions present special considerations and should be researched and analyzed prior to being used for valuation or ratio studies.

If the appraiser needs to include multiple-parcel sales, it should be determined whether the parcels are contiguous and whether the sale is a single economic unit or multiple economic units. Regardless of whether the parcels are contiguous, any multiple-parcel sale that involves multiple economic units generally should not be used in valuation or ratio studies.

The sum of the appraised values for the parcels involved in the transaction should be compared to the total sale price (see Appendix D for a copy of a multiple-parcel form.)

For example,

Parcel No.	Appraised Value	Sale Price
001	\$ 150,000	
002	50,000	
003	100,000	
Total	\$ 300,000	\$315,000

#### 5.7 IRS Section 1031 Exchanges

Internal Revenue Service (IRS) Code Section 1031 stipulates that investment properties can be sold on a tax-deferred basis if certain requirements are met. These transactions enable the taxpayer to defer capital gains tax on the sale of a business use or investment property. All net equity must be reinvested in a certain time period. A certain amount of undue stimuli may be present as this time period lapses. Sale transactions that represent Section 1031 exchanges should be analyzed like any other commercial transaction and, absent conditions that would make the sale price unrepresentative of market value, should be considered valid sales.

#### 5.8 Adjoining Property Owners

Sales in which the buyer already owns adjoining property should be examined carefully to determine whether or not the buyer possibly paid more or less than the property is worth on the open market. In some cases because of the neighbor relationship, the buyer may even receive a *deal* on the property. These sales should not be excluded solely because the buyer owns adjoining property unless one or more of the following reasons exists:

- Buyer is willing to pay more than the asking price.
- Buyer is willing to pay more than the fee appraisal.
- Selling price is substantially less than the asking price.
- Buyer is under undue stimuli to purchase the adjoining property.

#### 5.9 Leasebacks

A leaseback is defined as the sale of a building, land, or other property to a buyer under special arrangements for simultaneously leasing it on a long-term basis to the original seller, usually with an option to renew the lease. These transactions are also referred to as *sale and leaseback* and *sale-leaseback*. Leasebacks occur in the commercial and industrial class of property. Sales involving leasebacks are generally invalid because the sale price is unlikely to represent the market value of the property. This can be determined only by further verification of the sale (see Appendix B for questions involving leasebacks).

Typically, the land and location is purchased, the building erected, and the property sold with a long-term leaseback clause. A major benefit of the leaseback is cash-flow issues.

### 5.10 Property Characteristic Changes

Sales data files should reflect the physical characteristics of the property when sold. For ratio studies, if significant physical changes have occurred to the property between the date of sale and the appraisal date, the sale should not be included. The sale may still be valid for mass appraisal modeling by matching the sale price to the characteristics that existed on the date of sale. For consistency in application, written guidelines should be provided as to what constitutes significant change. For example, an improvement of \$3,500 may not be significant for a property with a selling price of \$255,000 (1.4 percent), but is significant for a property selling for \$21,000 (16.7 percent).

### 5.11 Property Change in Use

In conducting ratio studies property in which the use has changed between the date of appraisal and the date of sale should be excluded from further analysis. However, the sale may be used for analytical purposes if it can be matched with its use and physical characteristics at the time of sale.

### 5.12 Sales with Low and High Ratios

It is a best practice to set parameters for further verification on sales with extreme high or low ratios (e.g., less than 50 percent or greater than 150 percent). Such atypical ratios may be the result of problems that warrant further investigation. However, during sales verification sales should never be excluded from a ratio study solely on the basis of the computed ratio. If no problems are discovered with the sale, it will likely be identified as an outlier and be subject to removal during the statistical trimming process.

### 5.13 Short Sales

Short sales are difficult to recognize because the parties to the sale are typical buyers and sellers. In a short sale, the lien holder agrees to accept a payoff for less than the outstanding balance of the mortgage or loan. This negotiation is achieved through communication with a bank's loss mitigation or workout department. The homeowner or debtor sells the mortgaged property for less than the outstanding balance of the loan and turns over the proceeds of the sale to the lender. In such instances, the lender would have the right to approve or disapprove a proposed sale. Extenuating circumstances influence whether or not banks will discount a loan balance. These circumstances are usually related to the current real estate market and the borrower's financial situation. A short sale is typically faster and less expensive

than a foreclosure. A short sale is nothing more than negotiating with lien holders a payoff for less than what they are owed, or rather a sale of a debt on a piece of real estate short of the full debt amount. It does not extinguish the remaining balance unless settlement is clearly indicated on the acceptance of offer. As with all foreclosure-related sales, the element of undue stimuli exists. Therefore these sales should be treated like other foreclosure-related sales and considered for model calibration and ratio studies when, in combination with other foreclosure-related sales, they represent more than 20% of all sales in the market area, but only after a thorough verification process of each sale. Again, care should be taken when validating these types of sales to account for changes in property characteristics (see Section 5.10).

## 6. Documenting the Results of the Verification Process

A documentation form, preferably in electronic format, should be completed for all sales that have had a follow-up verification and the form should become part of the sales file (see Appendix E for an example of a documentation form). Helpful items on the form are listed below.

- Parcel identification number
- Unique sale number
- Contact information
- Conclusions/comments
- Sales source or screening codes
- Validity codes
- Name of person completing the form
- Date the form was completed

Documentation forms should be completed at the time each sale has been verified to limit the loss of valuable information or the possibility of mixing information from different transactions. It is far better to over-document than under-document to eliminate the need for additional follow-up contacts.

### 6.1 Parcel Identification Number

The parcel identification number is the numeric or alphanumeric description of a parcel that identifies it uniquely.

### 6.2 Unique Sale Number

Unique sale numbers tie a specific sale to a parcel(s) and eliminate problems caused by parcels with multiple sales.

### 6.3 Contact Information

Contact information includes the name of the person interviewed, their role in the transaction (buyer, seller,

**APPENDIX B**

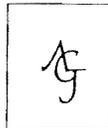
**REVIEW OF THE EXPANDED AGRICULTURAL LAND  
ANALYSIS METHODOLOGY**

**Prepared for**

**STATE OF NEBRASKA  
DEPARTMENT OF REVENUE, PROPERTY ASSESSMENT DIVISION  
AND TAX EQUALIZATION AND REVIEW COMMISSION**

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## 1. Executive Summary

Almy, Gloude-mans, Jacobs & Denne (AGJD) was selected to review the methodology adopted by the Property Tax Administrator (PTA) for reporting and opining on the need for equalization adjustments to county assessments of agricultural land, which adjustments may be ordered by the Tax Equalization and Review Commission. Recent changes to those methods had engendered unresolved questions and some controversy, resulting in a desire on the part of all stakeholders to resolve the issues before beginning work on the next cycle of data analysis. This report describes the various issues raised, the evidence and other considerations surrounding them, and the conclusions we reached. Our conclusions were based on our discussions with stakeholders, our familiarity with authoritative sources, including the IAAO *Standard on Ratio Studies* (2010) and the practices of other similar jurisdictions, and our analyses of the questioned methodology and supporting data for a sample of six agricultural market areas.

Section 2 of this report discusses the issue of agricultural land sales that include property other than land alone. Section 3 addresses the procedures that have been adopted by the Property Assessment Division of the Department of Revenue (the Division) for adding out-of-county sales and removing sales in order to make the sample more representative. Sections 1.1 and 1.2 below summarize our main recommendations in each area.

### 1.1 Agricultural Sales with Minimal Value Contributions Apart From Land

Sales of agricultural parcels where land, rather than improvements, constitutes at least 95 percent of the assessed value are treated by default in the analyses of the Division as if there were no contributory value associated with the minor improvements. Some local assessors oppose this policy and believe that if such sales are to be used the sale price should be adjusted using the prior improvement assessment. We find the Division's policy to be fundamentally reasonable. We suggest, however, that the current policy of a rebuttable presumption of nil value be clarified and a mechanism be developed to facilitate an efficient means by which assessors can rebut it and provide the estimate of contributory value required under best practices.

### 1.2 Methodology for Augmenting Minimal Land Sales in Measuring Value

The Division's methods of remedying small sample sizes have been criticized for being subject to bias, illegitimate, unnecessary, and otherwise unacceptable. We find there to be no grounds for rejecting the methods on their face. We believe that the perceived potential for bias was ill informed and that the sample-expansion efforts were well placed. We also believe that the methodology can be improved in several important respects. The chief improvements we believe can and should be made are to implement weighting as an alternative to random deletions when sales samples contain over-represented strata, to consider the development of a statewide CAMA model to enable market-based value estimates of virtually all agricultural land, to implement a practice of adjusting sales for time, and to develop more formal decision rules regarding sample expansion efforts and thereby clarify the rationale and legitimacy of the procedures.

## **2. Agricultural Sales where the Non-Agricultural-Land Component of the Sale Is less than 5 Percent of the Sale Price**

### **2.1 Background**

The Property Assessment Division of the Department of Revenue (the Division) has long had a history of including in its agricultural land analyses sales other than those that were pure land sales, i.e. those that were unaffected by any other contributions to total value, such as may arise from buildings or other improvements. As a result of uncertainties attendant on removing the contributory value of such other improvements from the undifferentiated total sale price reported for the transaction, the practice of using such sales was temporarily curtailed. It was recently reinstated as a result of concerns that the small sample sizes that resulted from requiring land-only stringency would not be adequately representative for the purposes of measuring land values and hence the need for equalization adjustments. In response to earlier experiences, when improvement value contributions on occasion greatly exceeded the current five-percent threshold, the Division currently limits its use of such sales to those under 5 percent. It also undertook research to determine the extent to which the non-land components of such transactions influenced the total sale price and the extent to which the assessed value of the non-land components, if systematically removed from the sale prices, would have affected the results of the Division's processes for measuring value and hence reaching conclusions about the counties' needs for an equalization adjustment.

### **2.2 Issues and Analyses**

At least three issues can be distinguished with respect to the use of improved agricultural sales:

- Should such sales be used?
- Is the 5 percent threshold a reasonable one?
- Does proper use of such sales require that the transaction price be adjusted by the assessed value of the improvement(s) in order to obtain an optimal estimate of the price that was paid for the land alone?

Use of sales minimally influenced by extraneous improvements is unquestionably reasonable. Absolute purity (that is, the absence of any improvements) in agricultural land sales is extremely rare in practice. Thus the number of sales providing indisputable market evidence will be minimal if not zero. This leads to very small samples being available for analyses, and small sample sizes lead to very serious analytical problems, as discussed at greater length below at sections 3.2.3 and 3.2.4.

The 5 percent threshold was selected by the Division as being a conservative response to concerns about the reliability of analyses incorporating their use. Five percent, interestingly, is also a widely used estimate of the inherent variability to be expected in even the best attempts to measure market values for the most easily appraised kinds of real property – sometimes called “market error” in contrast to appraisal error. Consequently, the International Association of Assessing Officers (IAAO) Standard on Ratio Studies suggests that reported coefficients of dispersion less than 5 percent are sufficiently rare that they can signal the potential for sales chasing on the part of assessors. We believe that using agricultural sales in which the influence of improvements apparently amounts to no more

than 5 percent of total value is eminently reasonable, and we can envision the use of such sales when the influences are even greater than 5 percent.

The propriety of using such sales without first deducting the assessed amount of the improvement has been rather strenuously disputed. The Division's research convinces it that buyers generally do not report their offer prices being influenced by the value of such ancillary improvements. Furthermore, the Division's ultimate reports very rarely reach a conclusion that turns on whether or not such adjustments were made to the raw data. Precedent for not adjusting for *de minimis* amounts abounds in assessment administration. It is nearly universal, for example, to ignore the value of personal property, such as appliances, in residential property transactions, attributing the entirety of the sale price to the real estate. We believe there are reasonable grounds, given the low 5 percent threshold, for the Division not to deduct the assessed value of the improvements as a matter of course. We are especially persuaded that the price paid for the land may have been higher in the absence of the trivial improvements rather than lower. An automatic adjustment in the opposite direction would, therefore, constitute a systematic bias in understating land values in comparison to the present policy – which arguably defaults to at least occasionally overstating them, but gives assessors the opportunity to correct the error, if there is one, by rebutting the default. We see the current policy as a middle position and a way of splitting and addressing the errors that arise from the ambiguity of the situation, not as a professional affront or an abuse of power.

We understand the Division's position to be that if a showing can be made that a given improvement positively influenced a sale price, an adjustment reflecting the actual contributory value (not necessarily the prior assessment), can be considered. This strikes us as optimal. A clearer statement of a perhaps more lenient policy of the mechanics by which an adjustment will be made – perhaps a simple statement from the assessor, far short of an affidavit – would help alleviate the rancor surrounding this situation. If such statements invariably match the prior assessment, a reminder that the IAAO Standard calls for a “contributory value” value deduction, not an automatic mechanical one, may be warranted, but all stakeholders should respect the others' perspectives.

### **2.3 Recommendations**

We recommend that the Division continue to use sales of agricultural land as evidence of land value where the assessment of the non-agricultural-land component of the parcel is less than 5 percent of the sale price. We also recommend that the county assessors' statements of the contributory value of the improvements not be unduly discredited. We recommend that such sales continue to entail a rebuttable presumption that the contributory value of the non-agricultural-land component is nil, but that a variety of ancillary facts – not only the deed declarations or affidavits mentioned in conversations with stakeholders – may overcome this presumption. We believe a simple statement from the assessor of the apparent contributory value, citing supporting pro-forma evidence such as the age of the improvement (newer ones being less likely to be obsolete) and whether the facilities on the acquired land are in productive use, should suffice.

### 3. Enhancing Samples with So-Called Borrowed Sales

#### 3.1 Background

Borrowed sales, perhaps better termed out-of-county sales, are sales of agricultural land that occurred outside the boundaries of the county for which the Division is using them to gauge the accuracy of the subject county's level of agricultural assessments. Using sales outside a county's boundaries to form an indicator of value is unremarkable inasmuch as economic markets do not generally coincide with political boundaries. However, since the Division needs to judge the accuracy of the local assessor's appraisals in a county other than the one in which the sale took place, the feasibility of using out-of-county sales is not necessarily obvious. In practice, however, their usage is rather unremarkable. Based on detailed soil surveys, with consideration of other factors not enumerated here, productive agricultural land has been classified on a uniform statewide basis into 24 land capability groups (LCGs), with 8 quality levels for each of 3 major land uses (MLUs): irrigated, dry, and grass land. (Timber, waste land, and a few other ancillary categories are outside the scope of this discussion.) Each county assessor identifies the number of acres any given parcel has of each of the 24 LCGs. This is true even for the few counties that appraise such land on another basis, such as soil types within parcels rather than LCGs within parcels. The local assessor also delineates market areas within the county, within which the 24 different LCG rates, expressed as dollars per acre per LCG, are effectively uniform. Many rural counties have only one market area, with the vast majority of counties having three or fewer market areas, although three counties approach having two dozen as seen in the Appendix. The Division monitors the counties' rates by LCG and market area, as well as their changes from one year to the next. It is thus an easy matter for the Division to impute an implicit value that would have been assigned to agricultural land sold in one county if it had been located in an adjoining county with an abutting market area and no changes to the combination of LCGs that constitute the parcel. The mechanics of making such implicit appraisals, in fact, are so generally accepted among stakeholders that no one raised any issues about the validity of the appraisals during our onsite discussions. The points of contention instead revolve around finer points of statistical sampling and ratio-study procedures.

Our understanding of the expanded methodology and its historical criticisms is as follows. In the first year of the expanded methodology, effective for assessments as of 1/1/2010, so-called borrowed sales were added from abutting townships in counties adjoining the subject county's market area exhibiting a dearth of sales, i.e. there was a maximum 6-mile distance over the county border to the sale for a given county's market area (CMA). This first expanded methodology was criticized for supposedly abandoning pure random samples and substituting samples that were perceived to have at least the potential for operator bias. It was also criticized for perceived discrepancies or inconsistencies in testimony concerning the procedures that were followed by the several staff members who were responsible for implementing the methodology. In the following year the methodology was augmented so that two procedures were followed: the prior year's methodology and a new methodology. The new methodology added more sales by widening margins, e.g. over-the-border sales could come from a second layer of townships so that a sale could routinely be as much as 12 miles from the subject county's border, although in rare cases the sale might have been even further distant from the subject county. (An undisputed claim was made that in some parts of the state there would be no case for differentiating locational effects for 150 or more miles.) The new methodology also allowed for deletions on a random basis to enhance the representativeness of the samples. In implementing the methodology there was also more

coordination among the Division's field liaisons, and there was a concerted effort to present more coherent testimony on it before the Tax Equalization and Review Commission (TERC). Nevertheless it was again criticized with respect to its unorthodoxy and supposed lack of compliance with IAAO standards. The program was implemented by regional liaisons using Excel with sophisticated templates and embedded macros. The leadership of the Division believes the program has been implemented uniformly among the regions due to the standardized templates and some coordination meetings among the several practitioners. We have reviewed a sample of data, including templates from five counties that would have been under the purview of five different regional liaisons and did not note any inconsistent practices among them.

### 3.2 Issues

There are a number of separate but intertwined issues involved in the criticisms surrounding this matter, which we address below.

#### 3.2.1 Is the procedure subject to biases?

When the enhanced procedure was first implemented, it was described as attempting to increase the representativeness of a greater variety of potential value influences, such as soil type, water, and proximity, than could intuitively be comprehended, leading to persistent suspicions that subjective selection, rather than random sampling, was governing the selection of samples being analyzed. Our review of how out-of-county sales are chosen largely put those fears to rest. During the most recent year the samples were chosen randomly using an Excel macro from within a pool of sales defined on the basis of their ability to (1) remedy sparse sales by MLUs, (2) remedy sparse sales by year, and (3) be drawn from a township abutting the relevant county's market area (CMA). Thus no undue subjectivity was required, and the additional random inclusions and exclusions incorporated in the enhanced methodology adopted for the second year sought to further allay such concerns.

#### 3.2.2 Is the procedure unrecognized or illegitimate?

The terminology of "borrowed sales," which failed to acknowledge that the out-of-county sales implicitly constituted appraisals, helped obscure two facts: (1) that they were a kind of supplemental appraisal and (2) that sales, whether they occur within the county or outside it, are generally treated as occurring randomly for purposes of ratio-study statistical purposes (although some exceptions are noted, especially having to do with sales of new construction). Thus, although the IAAO Standard fails to explicitly recognize the legitimacy of the course followed, and its authors probably never contemplated anything like Nebraska's methodology,<sup>1</sup> a reasonable argument can be made that the implicit appraisals have validity roughly equal to the appraisals made following the same procedures within the county. Of course neither may satisfy certain stringent requirements, such as those set forth by the Uniform Standards of Professional Appraisal Practice (USPAP), but that is not a criticism unique to the issue at hand. Further, the IAAO Standard sanctions efforts to increase the representativeness of sales for analytical purposes by means of randomly supplementing sales

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<sup>1</sup> Particularly its decision to eschew time trending and to address sample representativeness issues by means of out-of-county sales with random exclusions. See below at section 3.2.7 and following.

with appraisals (see section 7.4) and randomly excluding sample elements (see section 4.2). Thus, although we have some reservations about the details of the procedures, to be more fully addressed below, we disagree that there is a prima facie case to be made against their legitimacy.

### 3.2.3 Are the sample-expansion efforts unwarranted or unnecessary?

The Division's efforts to enlarge the sample size were warranted due to the small sample sizes, the consequent limited reliability of the statistical analyses derived from them, and the significant sums at stake in tax base shifts that can result from the analyses. (In the most recent year, more than 46 million agricultural acres were assessed, aggregating to more than \$39 billion of assessed value at a legislated 75 percent level of assessment.) Table 1 below summarizes for five representative counties the sample sizes and reliability of the main equalization statistic, i.e. the 95 percent confidence interval for the median assessment ratio, for both the unexpanded and ultimately expanded samples.

Table 1  
Sample Sizes and Statistical Reliability Before and After Sample Expansion for Five Sample Counties

County	CMA	Sample Size Before	Lower 95 Pct CI Before	Upper 95 Pct CI Before	Sample Size After	Lower 95 Pct CI After	Upper 95 Pct CI After
Dixon	26.1	19	64.7	87.3	35	55.66	73.8
	26.2	30	58.49	77.49	45	48.1	73.7
Furnas	33.1	64	68.27	73.68	92	66.00	70.44
Hooker	46.1	12	60.2	73.0	27	63.66	73.44
Platte	71.6	53	65.5	72.2	126	70.99	79.83
Wheeler	92.1	24	61.77	78.68	41	60.6	76.9

The width of the 95-percent confidence interval for the median for the before-enhancement samples (the difference between the upper and lower confidence limits or 22.6 and 19 percentage points, respectively, in the first two lines of the table) illustrates the problem of small samples. When samples are small there are fewer other sample items to dilute the effects of the occasional flukes that inevitably arise. State law requires the level of assessment for agricultural land to be 75 percent, but establishes a tolerance range of six percentage points, 69 percent to 75 percent, the latter being about 8% larger than the former, perhaps thereby establishing a legislatively expected level of reliability. The unexpanded sample has about four times that unreliability, since in the first line the upper boundary of the confidence level is 35% higher than the lower boundary. Such wide margins illustrate how unreliability, resulting from small sample sizes in the presence of inherent variability, impairs measurement and potentially obscures the need for remedial steps.

For a given level of variability in the population being analyzed, the reliability of summary measurements like the mean or median will increase with approximately the square root of the sample size. This will not be clearly illustrated in the table above since the ultimately expanded samples summarized there addressed both sample-size and sample-representativeness issues simultaneously. The issue of sample size alone will be addressed in the following section, but it is clear on the face of things that steps needed to be taken to address poor levels of measurement reliability.

### 3.2.4 What is the importance of sample size?

Sample size has a direct effect on the reliability of the statistical conclusions drawn from analyzing the sample. The effect varies not linearly, but rather, in general, with the square root of the sample size. Sample sizes for any given stratum of less than 5 are considered absolutely unreliable, with samples of size 20 providing only twice the minimum reliability, which is still unlikely to be reliable. Concrete figures on reliability depend on both the variability of the sample values as well as the sample size. Thus generalizations are hard, but one knows from experience that getting 80% yellow M&Ms is much more likely in a sample of 5 than in a sample of 80. To discuss sample size issues clearly it is necessary to isolate the separate effects of sample variability and sample size. In what follows we will assume that sample variability of values in the population, and by expectation the sample, is fixed and can be estimated by reference to prior years' work, perhaps tempered by interim results. Then the standard operating procedure for controlling sampling error, as described in IAAO's Standard on Ratio Studies at section 7.3 and Gloudemans' *Mass Appraisal of Real Property*, (MARP) IAAO 1999, p. 271-278, is to adopt a conventional level of confidence, typically 95%, determine the likely level of variability based on available data, perhaps from prior years, specify a tolerance for error expressed as a percentage (for example no wider than the legislated tolerance range, i.e. 4.16 when expressed as a percent)<sup>2</sup>, and apply the formula to determine the required sample size for such confidence in the estimate of the mean assessment ratio. For example, the coefficients of variation (COVs) of the before-enhancement ratios in Table 1, above, ranged from about 20% to about 35%, (not shown), which, according to the formulas on MARP page 272, would require sample sizes not less than 92 (for a 20% COV) to not less than 282 (for a 35% COV) in order to achieve a measurement-error tolerance for the mean ratio as narrow as the tolerance interval set by the legislature. Specifying in advance the requisite sample size to permit specified confidence intervals for the median, as opposed to the mean, is problematic since the median is a non-parametric statistic. Calculating the confidence interval after the sample is in hand is relatively easy (see Appendix C of the IAAO Standard on Ratio Studies and references there) and encourages some practitioners to enlarge samples in an iterative fashion until the desired parameters are met, although this is not strictly legitimate from the perspective of classical statistics. Since the CI for the median is generally narrower than that for the mean, one reasonable alternative is to apply the formula for the mean to estimate the requirements for the median.

Despite our emphasis on calculating and acting on confidence intervals, we do not believe that confidence intervals should be used to constrain the equalization of farmland when the calculated median falls outside the legislatively established tolerance range. We continue to believe, as we stated in our prior report (2004), that the objective is to *ensure* the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law, not to test whether there is statistically conclusive evidence that it has not been achieved. As a practical matter, given small sample sizes, confidence intervals will often be wider than the legislated tolerance interval. In such cases layering confidence intervals atop the legislative tolerance interval might be taken as support for the view that action should be eschewed except in the most egregious cases. We see this as neither the letter nor intent of the law. But even if confidence intervals are not to be taken to constrain indicated action when

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<sup>2</sup> 4.16 percent is derived as follows: The interval 69 to 75 gives a range of 6, half of which is 3; centering the interval on 72, the ends of it are 72 plus or minus 3, and 3 is 4.16 percent of 72.

samples are small, prudence dictates that the measurements should be made as reliably as feasible, which is measured by confidence intervals and accomplished by increased sample sizes.

Sample-size rules of thumb may be used to guide augmentation efforts. For example, one could adopt a target of at least 30 with at least 5 observations in any MLU comprising at least 20% of assessed value, with an additional requirement that any MLU with at least 33% of assessed value have at least 10 sales. Although such rules of thumb would comport well with practices in other jurisdictions, more sophisticated guidelines, based on the variability of ratios and at least a rough equality of confidence levels and intervals among counties as suggested in the first paragraph of this section, would be better supported from the perspective of statistics and decision science. In either case, the Division would benefit from having its decision rules set forth more explicitly.

### **3.2.5 What role does randomness play – is it necessary and/or sufficient?**

The probability theory that supports drawing statistical inferences from sampling is actually based on an assumption of independent draws from an identically distributed set of data (an IID assumption). Randomness helps to ensure that the probability of one sampled item being drawn is not influenced by any other item being drawn or not drawn. Thus, by providing the “independent” part of the IID requirement, randomness is a necessary, but not a sufficient condition for enabling valid inferences about an entire county to be drawn from samples. Randomness can be of many types. In survey sampling random numbers can be used to select respondents from a comprehensive list. This parallels the Division’s drawing sales from a pool using Excel’s random number generator. Another kind of randomness underlies the use of sales as random samples for assessment purposes. A survey researcher would consider them a sample of convenience rather than a random sample, and some property tax equalization agencies would agree. Most such agencies, however, have decided that the apparently random incidence of most sales, rather than random selection by design, is adequate for their purposes given the level of resources available for the task. In any event, the randomness components of the Nebraska plan do not appear to introduce any problems of bias outside those already present in a sales-based analysis, although the somewhat related issue of sampling variability also needs to be addressed, as discussed above in section 3.2.4.

### **3.2.6 What role should representativeness play in concert with randomness?**

The requirement that the draws be from an identically distributed population reflects the fact that subjects of interest (e.g. land values or voter preferences) may be known to vary across segments of the population (e.g. irrigated vs. grassland or gender and social stratum). Drawing a sample with disproportionate representation from one subpopulation or stratum can easily lead to erroneous conclusions when analyses are extrapolated to populations where the stratum proportions differ from those reflected in the sample. In such cases stratification is used, of which there are two kinds. When the sampling is controllable by the analyst, as in some surveys, the sampling plan can be designed to be proportional. When this is not possible, strata can be identified after the fact and weighted, as is most often done with property sales in assessment equalization. Note that the IAAO Standard on Ratio Studies endorses weighting, and describes procedures for consolidating stratum statistics into an overall estimate that are clearly based on weighting and explicitly supports weighting in section 4.2 of part II. Weighting is also very commonly used even in survey samples, which do not always meet their design goals due to non responses, etc. Weighting, thus, has an

unquestionable place in statistics. Rather than weighting, the enhanced procedure reviewed here has adopted the practice of randomly adding and subtracting out-of-county sales, particularly those from outside the county, as an alternative to weighting. This alternative is also sanctioned by the IAAO standard. The merits of each alternative will be discussed further below at section 3.2.8. To summarize this issue, it is our opinion that the enhanced procedure's attention to sample representativeness as an issue beyond mere randomness was appropriate, although whether the measures adopted were optimal is addressed below at section 3.2.8.

### 3.2.7 Why emphasize time-period symmetry in designing the sampling quotas?

In designing the random-include and random-exclude provisions of the enhanced procedures under review here, the Division required not only that the sample resemble the population, but also that the years in which the sales incorporated in the analysis occurred be represented approximately evenly. This is not a usual requirement. It seems to stem from reluctance on the part of the Division to develop time adjustments for sales, which have clearly undergone significant trends over the statutorily defined three year period from which the sales are to be analyzed. The law does permit the Division to develop and apply time-adjustment<sup>3</sup> or trending factors, but the dearth of sales and the complexities of capturing potential differences in the trends among MLUs and geographic areas have apparently inhibited this practice. In the alternative, by ensuring that all three years are approximately evenly represented, the levels of value derived are more consistent among the counties, effectively targeting the midpoint of the sale period. Most recently, for example, the sale period was from 7/1/2007 to 6/31/2010, with the objective of measuring values as of 1/1/2011. With no trending and approximately equal representation among the years, it can be expected that the values derived from the analyses more closely reflect those as of 1/1/2009.

While recognizing that the task can be quite difficult, we believe the Division should work expeditiously to develop time trending adjustments and, once these are implemented, to abandon its practice of requiring equal representation among the years from which out-of-county sales are drawn. The Division's current requirement for sale-year symmetry has no other justification based on sampling theory.

The sales ratio trend method would probably provide the simplest method applicable for developing time-trending factors wherever there are sufficient sales. A more comprehensive MRA analysis, with the dependent variable being sale price per acre and independent variables for soil classes or LCGs, other relevant variables including locational data, and time of sale also appears to be eminently feasible, and would have the benefit of not being constrained by the sales available in particular counties. In addition to minimizing the variability in assessment ratios stemming from temporal changes in prices within the three-year window, an additional significant side benefit of time trending would be the possibility of going back up to five years for sales once appropriate adjustments are made for time. Our reading of the law seems to permit additional sales beyond the mandatory three year period, although it would be prudent to confirm or amend the relevant rules if necessary.

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<sup>3</sup> Current fashion is to substitute "adjustments for changes in market conditions" for time adjustment or trending. We adopt the simpler phrase in the belief that there can be no confusion of the concept with time-on-the-market considerations.

### 3.2.8 Are there better alternatives to random exclusions for enhancing representativeness?

The representativeness of a sample can be enhanced both by weighting and by randomly augmenting or pruning the sample in selected strata, as IAAO acknowledges. What are the advantages and disadvantages of each method? When the marginal cost of adding to the sample is trivial, as it is for the Division's out-of-county sales, then adding them is clearly the best solution. Larger samples, provided they are unbiased, permit greater reliability and confidence to be placed in the results and so should always be a high priority. When a super-abundance of one stratum threatens to bias results relative to another stratum, a sensible response is to down-weight the excessively represented stratum or up-weight the deficient one, provided there is sufficient representation in the latter; five is an absolute minimum, with twenty providing twice the reliability (recall it increases with the square root of sample size). Weighting is accomplished with more or less ease in different software. Excel, the software currently used by the Division, is not notably proficient with statistical matters, although it has been used with surprising effectiveness to date. R, SPSS, and SAS all are better suited to routinely handling the complications introduced by weighting, which is conceptually simple, especially for the mean, although it requires some special handling for the median. When random deletions are used instead of weighting, sample sizes are reduced, making the results more subject to sampling error and thereby less reliable.

In the present case, however, it should be noted that the weighting issues are rather unusual. In most studies and opinion polls the subjects (sampling units) belong unambiguously to one stratum or another, whereas in the present case it is not uncommon for any single parcel to include multiple MLUs in varying proportions. Properly handling or weighting each sale thus becomes more problematic. One way of handling the multiple MLU issue is to prorate sales with multiple uses. If a sale had multiple MLUs, its price could be prorated among MLUs for purposes of computing the weighted mean. For purposes of the median, the sale could be prorated based on the percentage of acreage in each MLU. For example, if 30% of acreage were irrigated and 70% were dry land, the sale would be counted as 0.3 irrigated sales and 0.7 dry land sales. As in the usual calculation of the median, the number of sales would be summed and the median computed based on the ratios corresponding to the midpoint of the distribution. The weighted median could then be calculated as a weighted average of the medians computed for each MLU, with the weights being proportional either to the percentage of total acreage or total value in each MLU in the county.

This is illustrated for a hypothetical dataset of 253 sales in the Appendix. The sample contained 3,406 acres of irrigated land, of which the median assessment ratio was found to be 0.499 (interpolating between ratios 0.498 for sampled acres through 1,683 and 0.512 for acres through 1,928). The dry land and grassland medians are computed in a similar manner, and the weighed median (0.629) is found as the MLU-acre-weighted average of the three medians.<sup>4</sup> The weights could also be based on the percentage of value in the three MLUs.

### 3.2.9 Are improvements possible at reasonable cost?

Although substituting weighting for random deletions would enhance the Division's procedures at minimal cost, it is not the only alternative with such potential. Another

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<sup>4</sup> Rather than weighting by MLU acres sold, the weighting could also be done by percentages of MLU acres in each farm sale, as was illustrated in discussions with the stake holders. Doing so is slightly more complicated.

possibility worth considering is the centralized development of a statewide Computer Assisted Mass Appraisal (CAMA) model for agricultural land with locational influences independent of county boundaries. This would permit sales from outside the boundaries of a single county to be used in developing an effectively unlimited number of estimates of value for (unsold) parcels within the counties' boundaries in a fashion that would raise no issues about the compliance of the appraisals with USPAP or IAAO standards. As an at least equally important side benefit, it would provide an excellent basis for the development of the time trending factors discussed above. Although the task may seem to be daunting, there are ample grounds for believing it can be done successfully. A multi-state CAMA model for agricultural land was recently implemented for internal insurance purposes by Farm Credit Services of America. Reports on its development are publicly available.<sup>5</sup> Use of CAMA based appraisals for equalization purposes are similarly well established, having been used in Colorado for several decades.

A more immediately achievable improvement would be to establish explicit targets for sample reliability to guide the sample expansion and weighting efforts. Absent the year-symmetry policy once time trending is put in place, the variability arising from sales occurring in different years will be eliminated and the remaining variability can be used, in concert with sample size formulas, to determine the sample sizes necessary to achieve specified levels of reliability (e.g. confidence interval widths for given levels of confidence). At present, we were told, 95 percent confidence intervals for the median, mean and weighted mean are calculated but not used. Failing to use them to establish sample-size-targets as described in section 3.2.4 above is a deficiency, inasmuch as such calculations, especially for the median, should be the determining factors in the decision rules driving the sample expansion procedures.

### **3.2.10 Are elected officials being constrained or coerced away from doing what they were elected to do?**

Resentment of oversight is almost universal, so comments to the effect that elected county officials felt the Division had pressured them in connection with the use of both minimally improved sales and so-called borrowed sales were not unexpected. Our review of the position of the Division on the minimally improved sale issue leads us to believe it is reasonable, and we are similarly comfortable with the balance of responsibilities between TERC and the Division on the subject of the issuance of equalization orders to the counties. If anything, our impression is that, by failing to adjust sales prices for time, the Division may have been insufficiently assertive rather than overly assertive in the performance of its statutory duties. This observation is not meant to fault any of parties involved. Tension among the checks and balances designed into our system of government are inevitable and a symptom of its health.

## **3.3 Recommendations**

3.3.1 We recommend that significant attention continue to be paid to issues of sample size and representation, and that any pressures to accept the potentially erratic results of small unrepresentative samples in the name of "letting the chips fall where they may" be resisted.

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<sup>5</sup> These include *Visual Valuation*. (Chicago, Appraisal Institute, 2010) and several seminar and conference presentations available from the IAAO library.

3.3.2 We recommend that serious consideration be given to developing valid adjustments for changes in price levels between the date of sale and the effective date of the Property Tax Administrator's (PTA's) Report and Opinion.

3.3.3 We recommend that consideration be given to weighting sample elements in preference to deleting them for purposes of increasing a sample's representativeness.

3.3.4 We recommend that consideration be given to developing a statewide CAMA model for agricultural land incorporating variables for time of sale, LCG/MLU considerations, and locational factors not constrained by political boundaries not of economic significance. Such a model could be used to develop market-based appraisals for virtually all agricultural land in each county, thus providing nearly complete coverage and avoiding issues of proportionality among MLUs in sales samples.

3.3.5 We recommend that explicit decision rules be developed to guide the use of out-of-county sales and clarify their legitimacy in terms of target sample size and statistical reliability. Target sample sizes would ideally derive from sample size formulas, but rules of thumb guided by statistical principles and practical criteria may be more realistic.

## Appendices

### Acknowledgments

AGJD is grateful for the assistance provided by the staff of the Department of Revenue, under the direction of Doug Ewald, Tax Commissioner. We particularly wish to thank Ruth Sorensen, Property Tax Administrator, and her staff, including Jon Cannon, Denny Donner, and Derrick Niederklein. We are also grateful for the insights of the members of the Tax Equalization and Review Commission: Nancy Salmon, Chairperson, Robert Hotz and Thomas Freimuth, Commissioners. Additional insights we appreciate receiving came from Marilyn Hladky, Seward County Assessor, Larry Dix, NACO Executive Director, and the writings of Robert Wickersham, former TERC Commissioner.

### Acronyms and abbreviations

AGJD	Almy, Gloudemans, Jacobs & Denne, the authors of this report.
CAMA	Computer Assisted Mass Appraisal
CI 95%	Confidence Interval, the region within which one would expect a statistic (the median in this case) to lie 95 percent of the time if the analysis were repeated a very large number of times, with no changes to the population, but a (potentially) different random sample chosen each time. It is the standard way statisticians quantify the effects of so-called sampling error, independent of any other statistical issues, such as sampling biases.
CMA	County Market Area, a region of a county (perhaps its whole) expected to experience similar economic responses to varying conditions – an economic concept, not a political or governmental one; also known as market areas.
COV	Coefficient of Variation, a measure of the variability of a set of data, computed by dividing the standard deviation by the mean.
IAAO	International Association of Assessing Officers, often more specifically its Standard on Ratio Studies, 2010.
IID	Identically and Independently Distributed, the required characteristics of a set of data that, when met, allow estimates about the whole population to be inferred from a properly drawn sample with a computable degree of reliability.
LCG	Land Capability Group, one of a set of 24 quality-class and MLU combinations.
MARP	<i>Mass Appraisal of Real Property</i> , a book by Gloudemans published by IAAO, 1999.
MLU	Major Land Use, the three major types of productive agricultural land, i.e. irrigated, dry, and grassland.
MRA	Multiple Regression Analysis, a particular mathematical technique underlying most sales-based CAMA systems.
PTA	Property Tax Administrator
TERC	Tax Equalization and Review Commission
USPAP	Uniform Standards of Professional Appraisal Practice

Market areas

Distribution of Market Area Counts among the Counties

Market Areas per county	Number of counties
1	37
2	14
3	23
4	7
5	5
6	1
7	2
8	1
17	1
21	1
23	1
Total	93

Illustration of calculating a weighted median<sup>6</sup>

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cumulative	Dry Cumulative	Grass Cumulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.158	-	38	-	38	48	83	-
26.1	0.270	-	26	127	153	48	109	127
26.1	0.293	-	75	4	79	48	184	131
26.1	0.293	-	-	44	44	48	184	175
26.1	0.298	-	-	44	44	48	184	220
26.1	0.316	133	17	-	150	181	201	220
26.1	0.326	-	11	141	152	181	212	361
26.1	0.341	-	-	137	137	181	212	498
26.1	0.343	-	-	40	40	181	212	538
26.1	0.359	-	7	11	18	181	219	549
26.1	0.362	-	121	18	139	181	340	567
26.1	0.372	297	210	-	507	478	550	567
26.1	0.379	-	98	45	142	478	647	611
26.1	0.383	-	20	52	72	478	667	663
26.1	0.406	-	213	66	279	478	880	729
26.1	0.414	-	39	20	59	478	919	749
26.1	0.415	-	-	32	32	478	919	781
26.1	0.436	-	30	22	52	478	949	803
26.1	0.442	-	207	-	207	478	1,156	803
26.1	0.443	-	88	20	108	478	1,243	823
26.1	0.455	132	24	-	156	610	1,267	823

<sup>6</sup> Based on all available data for CMA26.1, pretending the ratios have been adjusted for time, which they have not been.

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cumulative	Dry Cumulative	Grass Cumulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.464	-	121	-	121	610	1,389	823
26.1	0.465	68	11	-	79	678	1,400	823
26.1	0.466	127	22	-	149	805	1,422	823
26.1	0.470	261	341	17	619	1,066	1,763	840
26.1	0.471	-	153	-	153	1,066	1,915	840
26.1	0.475	-	156	-	156	1,066	2,071	840
26.1	0.476	-	78	-	78	1,066	2,149	840
26.1	0.476	-	-	38	38	1,066	2,149	878
26.1	0.477	129	28	-	157	1,195	2,177	878
26.1	0.481	-	113	-	113	1,195	2,290	878
26.1	0.484	-	80	-	80	1,195	2,370	878
26.1	0.486	-	78	-	78	1,195	2,449	878
26.1	0.492	-	76	-	76	1,195	2,525	878
26.1	0.494	125	31	-	156	1,320	2,556	878
26.1	0.496	-	29	-	29	1,320	2,585	878
26.1	0.496	-	109	10	119	1,320	2,694	888
26.1	0.497	90	85	-	175	1,410	2,779	888
26.1	0.498	59	9	-	69	1,470	2,789	888
26.1	0.498	-	641	67	708	1,470	3,430	955
26.1	0.498	213	22	-	235	1,683	3,452	955
26.1	0.499	-	133	2	135	1,683	3,585	957
26.1	0.503	-	156	-	156	1,683	3,741	957
26.1	0.505	-	39	-	39	1,683	3,780	957
26.1	0.505	-	70	-	70	1,683	3,850	957
26.1	0.510	-	43	31	74	1,683	3,893	988
26.1	0.512	246	31	-	277	1,928	3,924	988
26.1	0.514	-	103	-	103	1,928	4,026	988
26.1	0.515	-	32	-	32	1,928	4,058	988
26.1	0.518	-	28	10	38	1,928	4,086	998
26.1	0.523	-	79	-	79	1,928	4,165	998
26.1	0.524	-	142	-	142	1,928	4,308	998
26.1	0.527	-	191	1	192	1,928	4,499	999
26.1	0.529	-	40	-	40	1,928	4,538	999
26.1	0.530	-	62	15	77	1,928	4,600	1,014
26.1	0.531	-	248	32	280	1,928	4,848	1,046
26.1	0.532	-	50	22	71	1,928	4,897	1,067
26.1	0.537	-	39	-	39	1,928	4,936	1,067
26.1	0.537	-	79	-	79	1,928	5,015	1,067
26.1	0.539	63	13	-	76	1,992	5,028	1,067
26.1	0.540	-	76	-	76	1,992	5,104	1,067
26.1	0.542	-	91	24	115	1,992	5,195	1,091
26.1	0.545	-	-	60	60	1,992	5,195	1,151

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cumulative	Dry Cumulative	Grass Cumulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.546	-	39	-	39	1,992	5,234	1,151
26.1	0.552	-	79	-	79	1,992	5,313	1,151
26.1	0.553	-	114	-	114	1,992	5,428	1,151
26.1	0.555	-	91	-	91	1,992	5,518	1,151
26.1	0.557	-	77	-	77	1,992	5,595	1,151
26.1	0.557	-	228	-	228	1,992	5,823	1,151
26.1	0.560	-	155	-	155	1,992	5,978	1,151
26.1	0.566	-	159	-	159	1,992	6,137	1,151
26.1	0.568	-	39	-	39	1,992	6,176	1,151
26.1	0.571	-	379	-	379	1,992	6,555	1,151
26.1	0.571	-	300	-	300	1,992	6,854	1,151
26.1	0.571	-	69	-	69	1,992	6,924	1,151
26.1	0.571	-	148	-	148	1,992	7,071	1,151
26.1	0.575	-	151	-	151	1,992	7,222	1,151
26.1	0.575	-	67	-	67	1,992	7,290	1,151
26.1	0.575	-	172	20	192	1,992	7,461	1,171
26.1	0.577	107	56	-	163	2,099	7,517	1,171
26.1	0.579	-	145	-	145	2,099	7,661	1,171
26.1	0.580	-	76	-	76	2,099	7,738	1,171
26.1	0.580	-	155	-	155	2,099	7,893	1,171
26.1	0.580	-	194	-	194	2,099	8,087	1,171
26.1	0.580	-	72	-	72	2,099	8,159	1,171
26.1	0.581	-	166	29	196	2,099	8,325	1,200
26.1	0.581	-	154	-	154	2,099	8,480	1,200
26.1	0.583	-	99	14	113	2,099	8,579	1,214
26.1	0.584	-	78	-	78	2,099	8,657	1,214
26.1	0.585	-	150	-	150	2,099	8,807	1,214
26.1	0.588	-	128	4	132	2,099	8,934	1,218
26.1	0.591	-	39	-	39	2,099	8,973	1,218
26.1	0.592	-	39	-	39	2,099	9,012	1,218
26.1	0.592	-	172	20	192	2,099	9,184	1,238
26.1	0.596	-	40	-	40	2,099	9,224	1,238
26.1	0.604	-	77	-	77	2,099	9,300	1,238
26.1	0.604	-	77	-	77	2,099	9,377	1,238
26.1	0.609	-	156	-	156	2,099	9,533	1,238
26.1	0.609	69	10	-	79	2,167	9,544	1,238
26.1	0.610	-	146	-	146	2,167	9,690	1,238
26.1	0.610	-	74	-	74	2,167	9,764	1,238
26.1	0.612	-	71	-	71	2,167	9,835	1,238
26.1	0.612	-	69	-	69	2,167	9,904	1,238
26.1	0.621	-	186	-	186	2,167	10,090	1,238
26.1	0.621	-	144	-	144	2,167	10,234	1,238

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cumulative	Dry Cumulative	Grass Cumulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.621	-	79	-	79	2,167	10,313	1,238
26.1	0.623	-	25	-	25	2,167	10,338	1,238
26.1	0.629	-	114	-	114	2,167	10,452	1,238
26.1	0.634	-	79	-	79	2,167	10,531	1,238
26.1	0.636	-	99	-	99	2,167	10,630	1,238
26.1	0.639	-	77	-	77	2,167	10,707	1,238
26.1	0.647	-	40	-	40	2,167	10,747	1,238
26.1	0.647	-	38	-	38	2,167	10,785	1,238
26.1	0.654	-	39	-	39	2,167	10,824	1,238
26.1	0.655	60	15	3	78	2,228	10,839	1,241
26.1	0.658	128	28	-	156	2,356	10,867	1,241
26.1	0.659	-	97	39	136	2,356	10,964	1,280
26.1	0.659	-	113	-	113	2,356	11,077	1,280
26.1	0.660	-	79	37	116	2,356	11,155	1,317
26.1	0.662	-	32	-	32	2,356	11,187	1,317
26.1	0.662	-	77	-	77	2,356	11,264	1,317
26.1	0.664	-	37	-	37	2,356	11,301	1,317
26.1	0.667	-	155	-	155	2,356	11,456	1,317
26.1	0.667	-	219	-	219	2,356	11,675	1,317
26.1	0.667	-	73	-	73	2,356	11,748	1,317
26.1	0.669	-	154	-	154	2,356	11,901	1,317
26.1	0.670	-	79	-	79	2,356	11,980	1,317
26.1	0.671	-	120	-	120	2,356	12,101	1,317
26.1	0.671	-	119	87	206	2,356	12,220	1,404
26.1	0.674	-	58	19	77	2,356	12,278	1,423
26.1	0.675	-	19	-	19	2,356	12,296	1,423
26.1	0.675	-	66	-	66	2,356	12,362	1,423
26.1	0.676	-	77	-	77	2,356	12,439	1,423
26.1	0.676	-	150	-	150	2,356	12,590	1,423
26.1	0.678	-	97	-	97	2,356	12,687	1,423
26.1	0.680	-	38	-	38	2,356	12,725	1,423
26.1	0.693	-	74	-	74	2,356	12,799	1,423
26.1	0.696	-	153	-	153	2,356	12,952	1,423
26.1	0.696	-	135	-	135	2,356	13,087	1,423
26.1	0.698	-	38	-	38	2,356	13,125	1,423
26.1	0.700	-	32	-	32	2,356	13,157	1,423
26.1	0.702	129	25	-	154	2,484	13,182	1,423
26.1	0.703	-	76	-	76	2,484	13,258	1,423
26.1	0.704	-	77	-	77	2,484	13,335	1,423
26.1	0.704	-	146	-	146	2,484	13,481	1,423
26.1	0.709	-	79	-	79	2,484	13,560	1,423
26.1	0.709	-	66	-	66	2,484	13,626	1,423

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cumulative	Dry Cumulative	Grass Cumulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.710	-	230	-	230	2,484	13,856	1,423
26.1	0.712	-	39	-	39	2,484	13,895	1,423
26.1	0.716	-	74	-	74	2,484	13,969	1,423
26.1	0.721	-	74	-	74	2,484	14,043	1,423
26.1	0.725	-	169	5	174	2,484	14,212	1,428
26.1	0.725	-	116	2	117	2,484	14,328	1,430
26.1	0.730	-	111	7	118	2,484	14,439	1,436
26.1	0.731	-	155	-	155	2,484	14,595	1,436
26.1	0.735	-	40	-	40	2,484	14,635	1,436
26.1	0.735	-	48	34	81	2,484	14,682	1,470
26.1	0.736	-	65	5	70	2,484	14,747	1,475
26.1	0.738	-	107	10	116	2,484	14,854	1,484
26.1	0.738	-	77	-	77	2,484	14,931	1,484
26.1	0.742	-	34	21	54	2,484	14,964	1,505
26.1	0.746	-	18	12	30	2,484	14,982	1,517
26.1	0.750	-	75	-	75	2,484	15,057	1,517
26.1	0.753	115	30	6	151	2,599	15,088	1,523
26.1	0.753	63	52	-	115	2,661	15,140	1,523
26.1	0.754	260	47	-	307	2,921	15,187	1,523
26.1	0.755	-	131	7	139	2,921	15,318	1,531
26.1	0.756	-	69	-	69	2,921	15,387	1,531
26.1	0.756	-	146	-	146	2,921	15,534	1,531
26.1	0.758	-	18	-	18	2,921	15,552	1,531
26.1	0.759	-	19	-	19	2,921	15,570	1,531
26.1	0.760	-	148	3	151	2,921	15,718	1,534
26.1	0.761	-	68	-	68	2,921	15,786	1,534
26.1	0.766	-	65	12	77	2,921	15,851	1,546
26.1	0.767	62	17	-	79	2,983	15,868	1,546
26.1	0.767	-	17	-	17	2,983	15,885	1,546
26.1	0.768	27	7	6	40	3,010	15,892	1,552
26.1	0.769	-	149	-	149	3,010	16,040	1,552
26.1	0.770	-	35	-	35	3,010	16,075	1,552
26.1	0.771	132	25	-	157	3,142	16,100	1,552
26.1	0.773	-	40	-	40	3,142	16,139	1,552
26.1	0.774	-	69	30	100	3,142	16,208	1,582
26.1	0.774	-	4	-	4	3,142	16,212	1,582
26.1	0.778	140	14	-	155	3,283	16,227	1,582
26.1	0.780	-	134	-	134	3,283	16,361	1,582
26.1	0.786	-	78	-	78	3,283	16,439	1,582
26.1	0.791	-	92	16	109	3,283	16,531	1,599
26.1	0.796	-	128	10	138	3,283	16,659	1,608
26.1	0.797	-	299	-	299	3,283	16,958	1,608

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cummulative	Dry Cummulative	Grass Cummulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	0.806	-	133	-	133	3,283	17,091	1,608
26.1	0.807	-	55	-	55	3,283	17,146	1,608
26.1	0.808	-	79	-	79	3,283	17,225	1,608
26.1	0.817	-	134	22	156	3,283	17,359	1,630
26.1	0.819	-	154	-	154	3,283	17,513	1,630
26.1	0.820	-	77	-	77	3,283	17,590	1,630
26.1	0.824	-	12	-	12	3,283	17,602	1,630
26.1	0.825	37	0	2	40	3,319	17,602	1,632
26.1	0.826	-	147	-	147	3,319	17,749	1,632
26.1	0.836	-	95	19	114	3,319	17,844	1,651
26.1	0.844	-	77	-	77	3,319	17,921	1,651
26.1	0.851	-	77	-	77	3,319	17,998	1,651
26.1	0.852	-	79	-	79	3,319	18,077	1,651
26.1	0.852	-	79	-	79	3,319	18,156	1,651
26.1	0.855	-	-	40	40	3,319	18,156	1,691
26.1	0.860	-	92	43	135	3,319	18,248	1,734
26.1	0.862	-	78	-	78	3,319	18,326	1,734
26.1	0.867	-	49	-	49	3,319	18,375	1,734
26.1	0.871	-	76	-	76	3,319	18,451	1,734
26.1	0.871	-	224	8	232	3,319	18,675	1,743
26.1	0.873	-	75	3	78	3,319	18,750	1,746
26.1	0.888	-	38	-	38	3,319	18,788	1,746
26.1	0.892	-	91	24	115	3,319	18,879	1,770
26.1	0.895	-	48	3	51	3,319	18,927	1,773
26.1	0.905	-	98	-	98	3,319	19,025	1,773
26.1	0.909	-	78	-	78	3,319	19,103	1,773
26.1	0.910	-	75	-	75	3,319	19,178	1,773
26.1	0.920	-	75	-	75	3,319	19,253	1,773
26.1	0.932	-	74	-	74	3,319	19,327	1,773
26.1	0.943	-	156	75	231	3,319	19,483	1,848
26.1	0.943	-	59	-	59	3,319	19,542	1,848
26.1	0.946	-	155	-	155	3,319	19,697	1,848
26.1	0.950	86	63	-	149	3,406	19,760	1,848
26.1	0.951	-	44	49	93	3,406	19,804	1,897
26.1	0.960	-	19	-	19	3,406	19,823	1,897
26.1	0.978	-	20	-	20	3,406	19,842	1,897
26.1	0.980	-	150	-	150	3,406	19,992	1,897
26.1	0.986	-	63	14	76	3,406	20,055	1,911
26.1	1.007	-	101	170	272	3,406	20,156	2,081
26.1	1.008	-	79	-	79	3,406	20,235	2,081
26.1	1.022	-	223	-	223	3,406	20,458	2,081
26.1	1.023	-	76	-	76	3,406	20,534	2,081

CMA	Ratio	Irrig Acres This Sale	Dry Acres This Sale	Grass Acres This Sale	Total Acres This Sale	Irrig Cummulative	Dry Cummulative	Grass Cummulative
26.1	0.081	-	16	-	16	-	16	-
26.1	0.112	48	29	-	77	48	46	-
26.1	1.024	-	40	-	40	3,406	20,574	2,081
26.1	1.030	-	60	-	60	3,406	20,634	2,081
26.1	1.041	-	79	-	79	3,406	20,713	2,081
26.1	1.056	-	79	-	79	3,406	20,792	2,081
26.1	1.083	-	98	41	138	3,406	20,889	2,122
26.1	1.089	-	142	-	142	3,406	21,031	2,122
26.1	1.112	-	152	-	152	3,406	21,183	2,122
26.1	1.135	-	187	42	230	3,406	21,370	2,164
26.1	1.143	-	153	-	153	3,406	21,523	2,164
26.1	1.143	-	153	-	153	3,406	21,676	2,164
26.1	1.150	-	8	-	8	3,406	21,684	2,164
26.1	1.157	-	22	-	22	3,406	21,706	2,164
26.1	1.251	-	15	-	15	3,406	21,720	2,164
26.1	1.312	-	194	-	194	3,406	21,914	2,164
26.1	1.376	-	59	13	72	3,406	21,973	2,177
26.1	1.400	-	185	3	188	3,406	22,157	2,180
26.1	1.400	-	185	3	188	3,406	22,342	2,184
26.1	1.414	-	39	-	39	3,406	22,381	2,184
26.1	1.433	-	37	-	37	3,406	22,418	2,184
26.1	1.520	-	67	-	67	3,406	22,485	2,184
Halfway To Acre Total (i.e. median acre)						1,703	11,243	1,092
Floor Ratio		0.498	0.662	0.542				
Interpolated		0.499	0.662	0.542				
Ceiling Ratio		0.511	0.662	0.545				
Total in Abstract		14,334	77,246	7,977	99,557			
Abstract %		0.144	0.776	0.080	1.000			
Median (interp)		0.499	0.662	0.542				
% x Median		0.072	0.514	0.043	0.629			

Weighted Median =  $0.144 \times 0.499 + 0.776 \times 0.662 + 0.080 \times 0.542 = 0.072 + 0.514 + 0.043 = 0.629$ .

**APPENDIX C**



Kerry A. Schmid and John W. Reisz, Deputy County Attorneys for Sarpy County, Nebraska, was present as legal counsel for the Sarpy County Board of Equalization (“the County Board”).

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.). The final decision and order of the Commission in this case is as follows.

## I. ISSUES

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining taxable value of the subject property, is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2009.

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining the equalized taxable value of the subject property is unreasonable or arbitrary;

Whether the equalized taxable value of the subject property was determined by the County Board in a manner and an amount that is uniform and proportionate as required by Nebraska's Constitution in Article VIII §1; and

The equalized taxable value of the subject property on January 1, 2009.

## II. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Sarpy County Assessor, value as proposed in a timely protest, and taxable value as determined by the County Board is shown in the following table:

Case No. 09SV 008

Description: SE¼ Section 2, Township 12, Range 10, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$105,123.00	\$105,123.00	\$105,123.00
Site	\$82,000.00	\$15,000.00	\$63,900.00
Residence	\$128,554.00	\$128,554.00	\$128,554.00
Outbuilding	\$4,462.00	\$4,462.00	\$4,462.00
Total	\$320,139.00	\$253,139.00	\$302,039.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on July 17, 2010, as amended by an Order issued on September 29, 2010, set a hearing of the appeal for September 30, 2010, at 9:00 a.m. CDST.
6. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Taxable value of the subject property as of the assessment date for the tax year 2009 is:

Case No. 09SV 008

Agricultural land	\$ 90,786.00
Site	\$ 85,793.00
Residence	\$ 128,554.00
Outbuildings	\$ 4,462.00
Total	<u>\$ 309,595.00.</u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (2010 Cum. Supp.).
2. “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.” Neb. Rev. Stat. §77-112 (Reissue 2009).

3. “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.” Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.”  
*Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. 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. Neb. Rev. Stat. §77-131 (Reissue 2009).
6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. 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).
8. “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." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

9. "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." Neb. Rev. Stat. §77-1359 (2)

(Reissue 2009).

10. The Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses. Neb. Const. art. VIII, §1 (5).

11. Agricultural or horticultural 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 for such special valuation is filed and

approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land. Neb. Rev. Stat. §77-1344 (1) (Reissue 2009).

12. Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343. Neb. Rev. Stat. §77-201 (3) (Reissue 2009).
13. Special value is 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.. Neb. Rev. Stat. §77-1343 (5) (Reissue 2009).
14. "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." Neb. Const., Art. VIII, §1.
15. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
16. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be

compelled to pay a disproportionate part of the tax. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

17. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *See Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
18. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
19. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).
20. The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
21. In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser. *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).

22. If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgement. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).
23. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
24. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
25. The presumption disappears if there is competent evidence to the contrary. *Id.*
26. 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. Neb. Rev. Stat. §77-5016 (8) (2010 Cum. Supp.).

27. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. *See, e.g., Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
28. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
29. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
30. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
31. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
32. 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
33. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon

property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

34. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982)(determination of equalized taxable value); *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

#### IV. ANALYSIS

The subject property is an improved parcel in rural Sarpy County, Nebraska. Improvements on the parcel are two residences and two shed. (E:8, 9, 10 & 11). The subject property is qualified for special valuation. The unimproved lands were assessed as agricultural land and horticultural land at their special value. The land classified as site and the improvements were assessed at actual value.

Assessment of the land component of the subject property as determined by the County Board is shown in Exhibit 8 at page 5 & 6 as an agland inventory report. The agland report shows 65.75 acres of Dry Use, 9.31 acres of Grass Use, 69.72 acres of GRT2 Use, and 3 acres of Site use. (E8:5 & 6). Following the County Board's determination the County Assessor's office reviewed its assessment records. After review the County Assessor's office revised the agland inventory applicable to the subject property as shown in Exhibit 11 at page 4 & 5. The revised

agland inventory shows 38.72 acres of Dry Use, 34.06 Acres of Grass Use, 57.75 acres of GRT2 Use, 6.76 acres of Site Use and 11.41 acres of Waste. (E11:4 & 5). A further revision of the agland inventory was made by the County Assessor's office after reviewing photographs produced by the Taxpayer as Exhibit 46. After review of the photographs the number of Site Use acres was reduced and the number of Dry Use and GRT2 Use acres were decreased. The fact that classification of the land affects the determination of taxable value is apparent from the examination of any of the property record files submitted. In general, Dry Use contributes greater value than Grass Use, Grass Use contributes greater value than Grt2 use and Grt2 Use contributes more value than waste. The highest contribution to value is for Site Use.

The evidence is that the County Board relied on incorrect classifications of land for its determination of the assessed value of the land component. The determination of the County Board is unreasonable or arbitrary. The task before the Commission is now to determine based on the reasonableness of the evidence taxable value of the subject property. *See Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

The Taxpayer does not dispute the contribution to value made by the lands classified as Dry Use, Grass Use, Grt2 use or Waste. The contention of the Taxpayer is that the contribution to value made by the lands classified as site is excessive.

As noted there are two residences on the subject property and two sheds. "Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). Because the sites are not agricultural and horticultural land they are assessed at actual value. Neb. Rev. Stat. 77-201

(Reissue 2009). The County Board classified and valued two sites. (E8:6). The contributory value of an one acre site was determined to be \$42,300 and the contributory value of a two acre site was determined to be \$21,600. (E8:6).

There is no evidence to support the County Board's determination that the contribution to value by the sites was \$42,300 and \$10,800. There is evidence that during the period the County Board was hearing protests it received recommendations from two appraisers relating to the contribution to value of sites. The advice of the appraisers appears in Exhibits 6 & 7. The advice of both appraisers was rejected and the County Board made its own determination on an unknown basis.

The Taxpayers opinion of the contribution to value made by the sites is based on an appraisal and per acre value derived from the sales of parcels he deemed comparable. The appraisal relied on by the Taxpayer was not received. The property record files for seven parcels submitted by the Taxpayer were received as Exhibits 31, 32, 33, 34, 35, 36, and 37. Dates of sale, sale price, acres sold, and average price per acre for the parcels described in Exhibits 31, 32, 33, 34, 35, 36, and 37 are shown in the following table.

Exhibit	Date of Sale	Sale Price	Size	Price/acre
31	04/24/2008	\$125,000	3.12 acres	\$40,064.10
32	03/02/2007	\$40,000	.63 acres	\$63,492.06
33	10/31/2008	\$162,000	40 acres	\$4,050.00
34	06/19/2007	\$1,464,000	122.29 Acres	\$11,971.54
35	07/31/2007	\$66,950	3.19 acres	Not Calculated <sup>1</sup>
36	11/19/2008	160,000	34.3 acres	\$4,664.72
37	7/20/2007	\$1,625,000	272.68 acres	\$5,959.37

1. The parcel was improved at time of sale. Because some of the value paid would be attributed to the improvements the price paid for the land only cannot be determined.

Parcels described in Exhibits 31 and 32 were not considered by the Taxpayer to be comparable parcels. An Appraiser employed by the County Assessor's office stated that the parcels described in Exhibits 33, and 36 were not arms-length transactions and should not be considered. Arms-length transactions are sales between two or more parties, each seeking to maximize their positions from the transaction. 350 Neb. Admin. Code, ch 12, §002.21 (03/15/09). Arms-length transactions are deemed qualified sales. 350 Neb. Admin. Code, ch 12, §002.11 (3/15/09). Prices disclosed in qualified sales are used to estimate the value of unsold parcels. *See* Neb. Admin. Code, chs 12 & 50, (03/15/09). "Sales that are not arms-length ... should be identified and rarely if ever used." *The Appraisal of Real Estate*, 13<sup>th</sup> Edition, Appraisal Institute, (2008) at 304. "Non arms-length sales are usually not made on the open market or are not made with the objective of maximizing the financial position of the parties involved. Thus, they provide unreliable evidence of market value." *Mass Appraisal of Real Property*, International Association of Assessing Officers, (1999) at 53. "Sales in which the buyer is an executor or trustee are usually nonmarket sales at nominal consideration. Sales from an estate may be made to satisfy the debts of the deceased or the wishes of an heir; otherwise, the sales in which an estate is the seller may well be valid arms-length sales." *Id.* at 53-54. The sales were made at auction as part of the settlement of an estate. The Taxpayer did not offer evidence contradicting the conclusion of the Appraiser. The Commission adopts the Appraiser's conclusion. The remaining parcels for consideration are those described in Exhibits 34 and 37.

Both sales are for more than \$5,500 per acre. Even assuming that the Taxpayer's methodology is correct the evidence does not support his conclusion.

The Taxpayer asserts that the average selling price of an unimproved parcel can indicate the value that should be attributed to the lands used as the site for a residence or other buildings. While the Taxpayer implicitly recognizes that there are different uses for different portions of the parcel there is no recognition that different values might be assigned to those uses. An examination of the values assigned to the agricultural land and horticultural land component of the subject property will illustrate the difficulty presented by the Taxpayer's position. The agland inventory as adopted by the County Board shows four uses of the subject property, Dry Use, Gras Use, GRT2 and Site Use. (E8:5 & 6). Values assigned to the Dry Uses range from \$880 per acre to \$2,153 per ag/acre. (E8:5). The average value of an acre of Dry use would not be the value assigned to any of its constituent parts. Like wise if the parcel as a whole is considered, the same analysis could be made. The Taxpayers argument that the contribution to value of sites use on the subject property may be determined based on the average sales prices of parcels that may or may not have multiple uses is not persuasive.

An appraiser employed by the County Assessor ("appraiser") described the methodology used by that office to estimate the contribution to value of an acre of land used or to be used for residential purposes if contained in a larger parcel, for example a 40 acre tract. The basic premise of the analysis is that a higher value would be assigned to one acre and lesser values to succeeding acres due to the effects the principles of marginal utility. The argument is that the value of a commodity depends on the utility or usefulness of the marginal unit. See, *Property Appraisal and Assessment Administration*, The International Association of Assessing

Officers (1990) at 41. The theory assumes that the first unit purchased has higher utility or value than the second. *Id.* The County Assessor's office assumed that 5 acres was maximum acres that would be purchased for residential use and sought information on which to determine the value of marginal utility of each acre in a 5 acre tract. The County Assessor's arrayed sales are shown on a graph received as Exhibit 14 page 4.

Graphical analysis can help the appraiser discern systematic relationships in land values, which can then be incorporated into valuation schedules and adjustment factors. In general, sale price per unit is the dependent variable and should be depicted on the vertical (y) axis of the graph. Any other variable for which data are available should be selected as the independent variable and represented on the horizontal (x) axis. One variable of particular interest is the number of units, that is, the number of square feet, front feet or buildable units. Often there is a systematic negative relationship between the number of units and sale price per unit: The greater the number of units, the lower the price per unit. At least up to a point. *Id.* at 185.

Sales as graphed by the County Assessor show that as the size of a sold parcel increased its per acre sale price declined. The trail of green triangles that represents a line through the data points was developed after several tries to obtain a best fit. The line indicates that one acre of land has a value of \$64,000 for residential use. (E14:4). After the contributory value of one acre was determined the contributory value of the four remaining acres in a five acre parcel was estimated. A value of \$9,000 per acre was assigned to the second and third acres and a value of \$6,500 was assigned to the fourth acre and all remaining acres. Application of the model

produces a value of \$95,000 for a five acre parcel ( $\$64,000 + (\$9,000 \times 2 = \$18,000) + (\$6,500 \times 2 = \$13,000) = \$95,000$ ). Many other combinations would also result in an indicated value of \$95,000 for a five acre parcel. For example a schedule with the first acre valued at \$47,000 and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> acres valued at \$12,000 per acre will result in a value of \$95,000 assigned to a 5 acre parcel ( $\$47,000 + (\$12,000 \times 4 = \$48,000) = \$95,000$ ). Given the possibility that alternate valuation schedules are possible, it is necessary to examine the evidence in support of the valuation schedule adopted by the County Assessor.

The evidence in support of an assignment of \$64,000 to the first acre is a sale for \$40,000 of a .63 acre parcel on March 3, 2007. The sale was of Lot 38 Thousand Oaks Addition. (E14:2). The sale price per acre was \$63,492 ( $\$40,000 \div .63 = \$63,492$ ). Other sales in the array analyzed by the County Assessor were larger. The next smallest sale was of 3.07 acres. (E14:2 & 3). The average sale price of a three acre parcel would not indicate the contributory value of a 1 acre parcel for reasons noted above in the discussion of averages and marginal utility. When a value of \$64,000 is assigned to the first acre, the line that can be derived from the sales continues to move toward the left axis of the charts shown on pages 4 and 5 of Exhibit 14. Movement toward the left axis shows that price per acre increases as size decreases. The evidence that the first acre assigned a value of \$64,000 may be less than desired for certainty but there is evidence that it is appropriate.

The County Assessor assigned contribution to value of \$6,500 to the 4<sup>th</sup> and all succeeding acres. (E14:1). An examination of the line shown on Page 4 of Exhibit 14 shows that the average sale price of parcels over 5 acres but less than 30 acres ranges from \$16,000 to \$12,000. The average sale price of those parcels should not, however be considered as evidence

of the contribution to value of the 3<sup>rd</sup> acre for reasons noted above concerning the use of averages. The average of small numbers is influenced by the highest and lowest number in the array. The average sale price would include the 1<sup>st</sup> and 2<sup>nd</sup> acres which, based on application of marginal utility should have higher values. The average price of the 3<sup>rd</sup> acre is then influenced by the values that should be assigned to the 1<sup>st</sup> and 2<sup>nd</sup> acres. The average sale price of those parcels 5 to 30 acres in size may, likewise, not be the best indicator of the contribution to value of the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> acres.

Another chart shown at page 5 of Exhibit 14 shows that the average sale price of parcels of farm sales over 30 acres produces a line showing the value per acre to be \$6,500. Those sales were not deemed to be sales of residential parcels and the average sale price would not be unduly influenced by the size of the parcel. There is evidence that the County Assessors assignment of a contributory value of \$6,500 to the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> acres is correct.

An appraiser testified that 3 acres was the maximum number of acres found to have residential use in larger parcels. Using the schedule adopted by the county Assessor a 3 acre parcel would be deemed to have a value of \$82,000. ( $\$64,000 + \$9,000 + \$9,000 = \$82,000$ ). Sales of 3 acre parcels range from \$67,000 to \$156,000). (E14:2).

Using the schedule adopted by the County Assessor a five acre parcel would be deemed to have a value of \$95,000 as shown above. Sales of five acre parcel range from \$75,000 to \$112,125. (E14:3).

Derivation of the contributory value assigned the 2<sup>nd</sup> acre is simply a mathematical calculation necessary to arrive at a gross value for a 5 acre parcel of \$95,000.

The discussion above is based on contributions to value that are not adjusted for location. The County Assessor's value schedule was adjusted based on proximity to a highway and a landfill.

Valuation is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977). There is evidence to support the determinations of the County Assessor that sites contributed value on a sliding scale and that the scale applicable in this instance is \$65,000 for the first acre, \$9,000 for the second acre and 3<sup>rd</sup> acre, and \$6,500 for each succeeding acre. The contributions to value made by the Site Use portions of the subject property were adjusted based on proximity to a highway. There is no evidence to support the determinations of the County Board or the Taxpayer. Values as determined by the Appraiser after review of available information is the most reasonable estimate of the taxable value of the subject property.

The Taxpayer contends that taxable value of the subject property is not equalized because various parcels with different zoning were included in a class for analysis. Zoning restrictions applicable to the subject property or any other parcel are not in evidence and the Commission is unable to evaluate what effect zoning restrictions, whatever they are, might have on the actual value of any parcel or manner in which those restrictions might affect consideration of the equalized taxable value of the subject property.

## V. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction in this appeal.

2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2009, is vacated and reversed.
2. Taxable value, for the tax year 2009, of the subject property is:

Case No. 09SV 008

Agricultural land	\$ 90,786.00
Site	\$ 85,793.00
Residence	\$ 128,554.00
Outbuildings	\$ 4,462.00
Total	<u>\$ 309,595.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on June 1, 2011.

Signed and Sealed. June 1, 2011.

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Nancy J. Salmon, Commissioner

SEAL

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (2010 Cum. Supp.), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**

I concur in the result.

The analysis above considers two standards of review for review. One standard of review is stated as a presumption found in case law the other is found as stated in statute. I do not believe consideration of two standards of review are required by statute or case law.

The Commission is an administrative agency of state government. *See Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government, the Commission has only the powers and authority granted to it by statute. *Id.* The Commission is authorized by

statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (2010 Cum. Supp.). In general, the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

The Commission is authorized to review decision of a County Board of Equalization determining taxable values. Neb. Rev. Stat. §77-5007 (2010 Cum. Supp.). Review of County Board of Equalization decisions is not new in Nebraska law. As early as 1903, Nebraska Statutes provided for review of County Board assessment decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. *Id.* A standard of review stated as a presumption was adopted by Nebraska's Supreme Court. See, *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887)). The presumption was that the County Board had faithfully performed its official duties and had acted upon sufficient competent evidence to justify its actions. *See id.* In 1959, the legislature provided a statutory standard for review by the district courts of county board of equalization, assessment decisions. 1959 Neb Laws, LB 55, §3. The statutory standard of review required the District Court to affirm the decision of the county board of equalization unless the decision was arbitrary or unreasonable or the value as established was too low. *Id.* The statutory standard of review was codified in section 77-1511 of the Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). After adoption of the statutory standard of review, Nebraska Courts have held that the provisions of section 77-5011 of the Nebraska Statutes created a presumption that

the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *See, e.g. Ideal Basic Indus. V. Nucholls Cty. Bd. Of Equal.*, 231 Neb. 297, 437 N.W.2d 501 (1989). The presumption stated by the Court was the presumption that had been found before the statute was enacted.

Many appeals of decisions made pursuant to section 77-1511 were decided without reference to the statutory standard of review applicable to the district courts review of a county board of equalization's decision. *See, e.g. Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the Nebraska Supreme Court acknowledged that two standards of review existed for reviews by the district court; one statutory requiring a finding that the decision reviewed was unreasonable or arbitrary, and another judicial requiring a finding that a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence was overcome. No attempt was made by the *Hastings* Court to reconcile the two standards of review that were applicable to the District Courts.

The Tax Equalization and Review Commission was created in 1995. 1995 Neb. Laws, LB 490 §153. Section 77-1511 of the Nebraska Statutes was made applicable to review of county board of equalization assessment decisions by the Commission. *Id.* In 2001, section 77-1511 of Nebraska Statutes was repealed. 2001 Neb. Laws, LB 465, §12. After repeal of section 77-1511, the standard for review to be applied by the Commission in most appeals was stated in section 77-5016 of the Nebraska Statutes. Section 77-5016(8) requires a finding that the decision being reviewed was unreasonable or arbitrary. *Brenner v. Banner County Board of Equalization*,

276 Neb. 275, 753 N.W.2d 802 (2008). The Supreme Court has stated that the presumption which arose from section 77-1511 is applicable to the decisions of the Commission. *Garvey Elevators, Inc. V. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

The possible results from application of the presumption as a standard of review and the statutory standard of review are: (1) the presumption is not overcome and the statutory standard is not overcome; (2) the presumption is overcome and the statutory standard is not overcome; (3) the presumption is not overcome and the statutory standard is overcome; (4) and finally the presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. The second possibility does not therefore allow a grant of relief even though the presumption is overcome because the statutory standard remains. *See City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, and the statutory standard remains after the presumption has been overcome. *See id.* The burden of proof to overcome the presumption is competent evidence. *Id.* Clear and convincing evidence is required to show that a county board of equalization's decision was unreasonable or arbitrary. *See, e.g. Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the county board of equalization failed to perform its duties or act upon sufficient competent evidence is not always evidence that the county board of equalization acted unreasonably or arbitrarily because the statutory standard of review remains even if the presumption is overcome. *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). Clear and convincing evidence that a county board of equalization's determination, action, order, or

decision was unreasonable or arbitrary, as those terms have been defined, may, however, overcome the presumption that the county board of equalization faithfully discharged its duties and acted on sufficient competent evidence. In any event, the statutory standard has been met and relief may be granted. Both standards of review are met in the fourth possibility and relief may be granted.

Use of the presumption as a standard of review has been criticized. *See* G. Michael Fenner, *About Presumptions in Civil Cases*, 17 Creighton L. Rev. 307 (1984). In the view of that author, the presumption should be returned to its roots as a burden of proof. *Id.* Nebraska's Supreme Court acknowledged the difficulty of using two standards of review and classified the presumption in favor of the county board of equalization as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *See Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use of the *Gordman* analysis allows consideration of both the presumption and the statutory standard of review without the difficulties inherent in the application of two standards of review. It is within that framework that I have analyzed the evidence.

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Wm. R. Wickersham, Commissioner

**APPENDIX D**

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

CONNIE L. ANDERSON,	)	
	)	
Appellant,	)	Case No. 09SV 007
	)	
v.	)	DECISION AND ORDER
	)	REVERSING THE DECISION OF
SARPY COUNTY BOARD OF	)	THE SARPY COUNTY BOARD OF
EQUALIZATION,	)	EQUALIZATION
	)	AFTER RECONSIDERATION
Appellee.	)	

The above-captioned case was called for a hearing on the merits of an appeal by Connie L. Anderson ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on September 28, 2010, pursuant to an Order for Hearing and Notice of Hearing issued July 17, 2010. Commissioner Wickersham, Chairperson of the Commission, was the presiding hearing officer. Commissioner Warnes was absent. Commissioner Wickersham, as Chairperson, designated Commissioners Wickersham, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Connie L. Anderson was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kerry A. Schmid and John W. Reisz, Deputy County Attorneys for Sarpy County, Nebraska, were present as legal counsel for the Sarpy County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.). The final decision and order of the Commission in this case is as follows.

**I.  
ISSUES**

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2009, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board, determining taxable value of the subject property, is unreasonable or arbitrary; and

The taxable value of the subject property on January 1, 2009.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
3. Taxable value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Sarpy County Assessor, value as proposed in a timely

protest, and taxable value as determined by the County Board is shown in the following table:

Case No. 09SV 007

Description: Tax Lot R Section 12, Township 12, Range 10, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$34,937.00	\$31,026.00	\$34,937.00
Home Site	\$9,000.00	In Ag Land	\$12,000.00
Residence	\$166,136.00	\$139,860.00	\$161,726.00
Farm Site	\$64,000.00	In Ag Land	\$47,000.00
Outbuilding	\$945.00	In Residence	\$945.00
Total	\$275,018.00	\$170,886.00	\$256,608.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on July 17, 2010, set a hearing of the appeal for September 28, 2010, at 1:00 p.m. CDST.
6. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Taxable value of the subject property as of the assessment date for the tax year 2009 is:

Case No. 09SV 007

Agricultural land	\$ 19,170.00
Farm Site	\$ 64,000.00
Home Site	\$ 6,840.00
Residence	\$ 154,521.00
Outbuildings	\$ 945.00
Total	<u>\$ 245,476.00.</u>

### III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (2010 Cum. Supp.).
2. “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.” Neb. Rev. Stat. §77-112 (Reissue 2009).
3. “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.” Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. 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. Neb. Rev. Stat. §77-131 (Reissue 2009).

6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. 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).
8. "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." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).
9. "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." Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

10. The Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses. Neb. Const. art. VIII, §1 (5).
11. Agricultural or horticultural 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 for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land. Neb. Rev. Stat. §77-1344 (1) (Reissue 2009).
12. Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343. Neb. Rev. Stat. §77-201 (3) (Reissue 2009).
13. Special value is 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.. Neb. Rev. Stat. §77-1343 (5) (Reissue 2009).

14. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
15. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
16. The presumption disappears if there is competent evidence to the contrary. *Id.*
17. 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. Neb. Rev. Stat. §77-5016 (8) (2010 Cum. Supp.).
18. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. *See, e.g., Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
19. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).
20. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).

21. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
22. “An owner who is familiar with his property and knows its worth is permitted to testify as to its value.” *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
23. 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
24. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
25. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. 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).

#### IV. ANALYSIS

The subject property is a 36.5 acre parcel of land in rural Sarpy County Nebraska. The parcel is improved with a residence, detached garage, yard shed, and hay shed. The subject

property was qualified for special valuation. The unimproved lands were assessed as agricultural land and horticultural land at their special value. The home site, farm site and improvements were assessed at actual value. The Taxpayer contends that the contribution to actual value of the home site is less than as determined by the County Board and that more unimproved land in the parcel should be classified and valued as waste land.

Waste land as a subclass of agricultural land and horticultural land is defined as "land that cannot be used economically and that are(sic) not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marches, 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 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." 350 Neb. Admin. Code, ch. 14, §002.54 (03/09). Assessment of the agricultural land and horticultural land component of the subject property as determined by the County Board is shown in Exhibit 8 at page 4 as an agland inventory report. That report shows 4 acres of waste land contributing assessed value of \$320. (E8:4). The Taxpayer contends that gullies in the southwest corner of the subject property with the slopes leading into them should be classified as waste and heavily timbered areas should be classified as waste land. After the County Board made its determination the County Assessor's office reviewed its assessment records. After review the County Assessor's office revised the agland inventory applicable to the

subject property as shown in Exhibit 10 at page 3. The County Assessor's revised agland inventory shows two tracts of wasteland contributing assessed value of \$466 (\$394 + 72 = \$466). (E10:3). The agland inventory report relied on by the County Board as shown at Exhibit 8 at page 4 shows three soils by symbol and name MOD2 Monona Silt Loam Eroded 7, MSE2 Monona-Ida silt Loam Erod and MOE Monona Silt Loam 11-17. (E8:4). The County Assessor's revised agland inventory report shows the three soils relied on by the County Board, MOD2 Monona Silt Loam Eroded 7, MSE2 Monona-Ida Silt Loam Erod, and MOE Monona Silt Loam 11-17 and three additional soils MSF Monona - Ida Silt Loam 17-3, RK Rock Land, and RN Rough Broken Land - - Loes. (E10:3). The soil symbols and names were obtained from the soil survey for Sarpy County. Soil types as identified by symbol and name as found in the soil surveys are converted to classes and subclasses of land as prescribed by the Property Tax Administrator. Neb. Rev. Stat. §77-1362 (Reissue 2009). The result is that soil types which are alike will be converted to like subclasses, land valuation groups (LCGs), of agricultural land and horticultural land. This allows uniform classification of lands. After classification, values are assigned to each LVG or classification. Because proper classification is a component of the assessment process, the Commission has examined the soil type definitions as found in the soil survey for Sarpy County. Descriptions of the soils as they appear in the soil survey are as follows:

Monona silt loam, 7 to 11 percent slopes, eroded (MoD2). This soil is in smooth areas above steeper soils that border entrenched drainageways in the uplands. This soil has a profile similar to that described as representative of the series, but the surface layer is thinner and lighter colored. . . . This soil is easy to

till. Runoff is medium. Water erosion is the main hazard. Conserving rainfall is the main concern of management. Organic-matter content is moderate to moderately low. Most of the acreage is in cultivated crops, mainly corn, soybeans, and alfalfa. Small acreages are in grain sorghum and wheat. Some areas are in bromegrass. *Soil Survey of Douglas and Sarpy Counties, Nebraska*, United States Department of Agriculture, Soil Conservation Service, (1975) at 23.

Monona silt loam, 11 to 17 percent slopes (MoE). This soil is adjacent to entrenched drainageways in the uplands. This soil has a profile similar to that described as representative of the series, but the surface layer is slightly thinner. . . . This soil is easy to till. Runoff is medium. Water erosion is the main hazard. Conserving rainfall is the main concern of management. Organic-matter content is moderate. Most of the acreage is in grass or has been contour farmed, so the degree of erosion is only moderate. Small Ares are in cultivated crops, mainly corn, alfalfa, and grain sorghum. Small acreages are in soybeans and wheat. *Id.* at 23-24.

Monona and Ida silt loams, 1 to 17 percent slopes, eroded (MsE2). These soils are adjacent to entrenched drainageways in the uplands. Some areas are entirely Monona silt loam, others are entirely Ida silt loam, and many contain both soils. Each soil has a profile similar to the one described as representative of its respective series, but the surface layer is thinner. . . . Runoff is medium to rapid. Water erosion is the main hazard. Conserving rainfall is the main concern of management. Organic-matter content is moderate to low. Most of the acreage is

in cultivated crops, mainly corn, soybeans, and alfalfa. Small acreages are in grain, sorghum and wheat. Some areas are in brome grass. *Id.* at 24

Monona and Ida silt Loams, 17 to 30 percent slopes (MsF). These steep soils are mainly under grass and trees. Some areas are entirely Monona silt loam, others are entirely Ida silty loam, and many contain both soils. . . . Each soil has a profile similar to the one described as representative of its respective series, but the surface layer is slightly thinner. . . . Runoff is medium to rapid. Water erosion is the main hazard. Conserving and holding rainfall are the main concerns of management. Organic-matter content is moderate to low. Most of the acreage is in grass or grass and trees. The main grasses are big bluestem, little bluestem, side oats grama and switchgrass. Oaks, elm and hackberry are the main trees. *Id.* at 24.

Rock land (30 to 100 percent slopes) (Rk) is in very steep areas, mainly nearly vertical and vertical areas of rock outcrop along the bluffs of the Platte River Valley. Small areas are along the steep bank of large drainageways. The areas are 50 to 80 percent very shallow soils over sandstone or limestone; 10 to 45 percent of immature soils that formed in loess, glacial till, or shale; and about 10 percent bare rock. . . . Droughtiness is the main hazard. Steepness and high percentage of rack outcrop cause very rapid runoff. *Id.* at 28.

Rough Broken Land, Loess Rough broken land, loess (30 to 100 percent slopes) (Rn) consists of very steep to nearly vertical areas of Peoria Loess that contains large gullies and deeply entrenched drainageways and overfalls. . . .

Water erosion is the main hazard. Runoff is very rapid. Soil slipping, which is common in steeper areas, forms short vertical steps, commonly called catsteps. Rough broken land, loess, is not suitable for cultivation. Some areas are used for whatever grazing is available. Adjacent cultivated areas are used for whatever grazing is available. Adjacent cultivated areas are used by wildlife for food, nesting, and cover. Some areas on the Missouri River Bluffs are parks used for recreation. The vegetation is trees, brush, and native grasses, mainly big bluestem, little bluestem, side-oats grama, switchgrass, and indiangrass. *Id.* at 28.

A map locating the described soils on the subject property is found at sheet 50 of the soil maps for Sarpy County as found in the *Soil Survey of Douglas and Sarpy Counties, Nebraska*, United States Department of Agriculture, Soil Conservation Service, (1975). A map produced as Exhibit 12:1 mirrors the mapping of soils found in the soil survey at sheet 50. The County Assessor's revised agland inventory is a correct representation of the soils found on the subject property. The agland inventory relied on by the County Board was deficient because it did not describe the presence of Rock Land, or Rough Broken Land Loess.

The soils classified as Rock Land, and Rough Broken Land Loess, are in the southwestern corner of the subject property. The taxpayer described the area as consisting of steep slopes leading into gullies or ravines and that it was not capable of agricultural production. The descriptions for those soil types supports the characterization of the Taxpayer. The Commission determines that the lands containing those soil types on the subject property should be classified as wasteland with a contributory value of \$80 per acre.

After the County Board's determination, a representative of the County Assessor's office inspected the improvements on the subject property. Errors were found in the county's assessment records. After correction of the errors appearing in the assessment records the County Assessor's office reconsidered its estimate of the contribution to value made by the residence. The estimate of the contribution to value made by the residence as relied on by the County Board is shown at Exhibit 5 at page 23. The revised estimate of the contribution to value made by the residence as made by the County Assessor's office is shown at page 1 of Exhibit 10. A comparison of the two estimates shows that they were both made using the same methodology and that differences in value result from the changes in the characteristics of the residence. The County Board relied on erroneous information for its determination of the contribution to value made by the residence.

The evidence is that the County Board relied on incorrect classifications of land for its determination of the assessed value of the agricultural land and horticultural land and the contributory value of the residence. The determination of the County Board is unreasonable or arbitrary. The task before the Commission is now to determine based on the reasonableness of the evidence taxable value of the subject property. *See Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

Assessed value of the agricultural land and horticultural land can be determined by subtracting the value attributable to the 3.15 acres of Rough Broken Land - - Loes, \$14,753 and revaluing those acres as waste land at \$80 per acre and adding that value to the value of other agricultural land and horticultural land the result is \$19,170 (\$90,511 Total Land - \$64,000 Site - \$6,840 Site - \$753 Rough Broken Land - - Loes +  $(3.15 \times \$80 = \$252) = \$19,170$ ).

The contributory value of the residence as redetermined by the County Assessor was accepted by the Taxpayer at \$154,521.

As noted there is a residence and shed on the subject property. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure." Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). Because the sites are not agricultural and horticultural land they are assessed at actual value. Neb. Rev. Stat. 77-201 (Reissue 2009). The County Board classified and valued two sites. (E8:4). The contributory value of a one acre site was determined to be \$47,000 and the contributory value of another one acre site was determined to be \$12,000. (E8:4).

There is no evidence to support the County Board's determination that the contribution to value by the sites was \$47,000 and \$12,000. There is evidence that during the period the County Board was hearing protests it received recommendations from two appraisers relating to the contribution to value of sites. The advice of the appraisers appears in Exhibits 6 & 7. The advice of both appraisers was rejected and the County Board made its own determination on an unknown basis.

The Taxpayer contends that site contribution to value should be \$6720 per acre for .03 acres. The Taxpayer's opinion that site contribution to value was \$6,720 per acre is based on the average sale of parcels described in Exhibits 16, 18, 28, and 29. Dates of sale, sale price, acres sold, and average price per acre for the parcels described in Exhibits 16, 18, 28 and 29 are shown in the following table.

Exhibit	Date of Sale	Sale Price	Size	Price/acre
16	07/26/2006	\$190,000	20.02	\$9,490
18	07/19/2006	\$190,000	20.02	\$9,490
28	10/31/2008	\$162,000	40.00	\$4,050
29	11/19/2008	\$160,000	34.30	\$4,665
Total		\$702,000	114.34	\$6,140 <sup>1</sup>

1.  $\$702,000 \div 114.34 = \$6,110$ . NOTE the average of the average price per/acre is  $\$6,916.75$  ( $\$9,490 + \$9,490 + \$4,050 + \$4,665 = \$27,695 \div 4 = \$6,923.75$ ).

The averaging methodology used by the Taxpayer is not an accepted appraisal technique. Averages are inherently subject to influence by the size of the sample and the degree of uniformity in the sample. For example an array of the average of the sum of 1, 2, 3, and 4 is 2.5 ( $1 + 2 + 3 + 4 = 10 \div 4 = 2.5$ ) is the same as the average of .01 and 4.9 ( $.10 + 4.9 = 5 \div 2 = 2.5$ ). The valuation date at issue is January 1, 2009. Two sales of parcel near the size of the subject property sold for \$4,050 and \$4,665 per acre respectively. If the desire is to find the actual value of a 36.45 acre unimproved parcel, perhaps those sales are the best indicator of that value as of January 1, 2009. Averages also mask another problem. The parcel described in Exhibit 16 was purchased as unimproved land for \$190,000. A residence and other improvements were placed on the parcel in 2009. (E16:1). Land used for the improvements totaled 2.68 acres. (E16:5). More land was acquired than necessary for the construction of the improvements. A portion of the parcel was purchased for residential use, the balance of the parcel was obtained for another use. The values assigned by the buyer to the two uses are unknown, however, if it assumed that the 2.68 acres of land to be used for residential purposes had a value to the buyer of \$120,000, the value per acre is ~~\$44,776~~ per acre ( $\$44,776 \div 2.68 = \$44,776$ ) and the balance has a value of

\$4,036 per acre ( $\$190,000 - \$120,000 - \$70,000 \div 17.34 = \$4,036$ ). The average price paid for the whole was \$9,490. The average sale price of lands, some of which are purchased for residential use and partly for another use is not evidence of the value given for either use.

As a further example the agricultural land and horticultural land and component of the subject property was assessed based on the values assigned to different uses, dry crop land, grass, and waste. (E8:4). The average assessed value per acre of the 34.5 acres of agricultural land and horticultural land as determined by the County Board is \$1,012.67 ( $(\$93,937 - \$59,000 = \$34,937)(36.5 - 2 = 34.5)(\$34,937 \div 34.5 = \$1,012.67)$ ). The highest assessed value assigned to an acre of agricultural land and horticultural land is \$1,483 and the lowest assessed value assigned to an acre of agricultural land and horticultural and by the County Board is \$80. (E8:4). The Taxpayer does not argue that the agricultural land and horticultural land component of the subject property should be valued at an average value per acre, instead the Taxpayer argues for a reclassification of additional land as waste land so that its contribution to value is deemed to be \$80 per acre. The Taxpayers inconsistent positions do not support the use of an average value to determine the contribution to actual value of a site.

An appraiser employed by the County Assessor (“appraiser”) described the methodology used by that office to estimate the contribution to value of an acre of land used or to be used for residential purposes if contained in a larger parcel, for example a 40 acre tract. The basic premise of the analysis is that a higher value would be assigned to one acre and lesser values to succeeding acres due to the effects the principles of marginal utility. The argument is that the value of a commodity depends on the utility or usefulness of the marginal unit. *See Property Appraisal and Assessment Administration*, The International Association of Assessing Officers

(1990) at 41. The theory assumes that the first unit purchased has higher utility or value than the second. *Id.* The County Assessor's office assumed that 5 acres was maximum acres that would be purchased for residential use and sought information on which to determine the value of marginal utility of each acre in a 5 acre tract. The County Assessor's arrayed sales are shown on a graph received as Exhibit 15 page 4.

Graphical analysis can help the appraiser discern systematic relationships in land values, which can then be incorporated into valuation schedules and adjustment factors. In general, sale price per unit is the dependent variable and should be depicted on the vertical (y) axis of the graph. Any other variable for which data are available should be selected as the independent variable and represented on the horizontal (x) axis. One variable of particular interest is the number of units, that is, the number of square feet, front feet or buildable units. Often there is a systematic negative relationship between the number of units and sale price per unit: The greater the number of units, the lower the price per unit. At least up to a point. *Id.* at 185.

Sales as graphed by the County Assessor show that as the size of a sold parcel increased as its per acre sale price declined. The trail of green triangles that represents a line through the data points was developed after several tries to obtain a best fit. The line indicates that one acre of land has a value of \$64,000 for residential use. (E15:4). After the contributory value of one acre was determined the contributory value of the four remaining acres in a five acre parcel was estimated. A value of \$9,000 per acre was assigned to the second and third acres and a value of \$6,500 was assigned to the fourth acre and all remaining acres. Application of the model

produces a value of \$95,000 for a five acre parcel ( $\$64,000 + (\$9,000 \times 2 = \$18,000) + (\$6,500 \times 2 = \$13,000) = \$95,000$ ). Many other combinations would also result in an indicated value of \$95,000 for a five acre parcel. For example a schedule with the first acre valued at \$47,000 and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> acres valued at \$12,000 per acre will result in a value of \$95,000 assigned to a 5 acre parcel ( $\$47,000 + (\$12,000 \times 4 = \$48,000) = \$95,000$ ). Given the possibility that alternate valuation schedules are possible, it is necessary to examine the evidence in support of the valuation schedule adopted by the County Assessor.

The evidence in support of an assignment of \$64,000 to the first acre is a sale for \$40,000 of a .63 acre parcel on March 3, 2007. The sale was of Lot 38 Thousand Oaks Addition. (E15:2). The sale price per acre was \$63,492 ( $\$40,000 \div .63 = \$63,492$ ). Other sales in the array analyzed by the County Assessor were larger. The next smallest sale was of 3.07 acres. (E15:2 & 3). The average sale price of a three acre parcel would not indicate the contributory value of a 1 acre parcel for reasons noted above in the discussion of averages and marginal utility. When a value of \$64,000 is assigned to the first acre, the line that can be derived from the sales continues to move toward the left axis of the charts shown on pages 4 and 5 of Exhibit 5. Movement toward the left axis shows that price per acre increases as size decreases. The evidence that the first acre assigned a value of \$64,000 may be less than desired for certainty but there is evidence that it is appropriate.

The County Assessor assigned contribution to value of \$6,500 to the 4<sup>th</sup> and all succeeding acres. (E15:1). An examination of the line shown on Page 4 of Exhibit 15 shows that the average sale price of parcels over 5 acres but less than 30 acres ranges from \$16,000 to \$12,000. The average sale price of those parcels should not, however be considered as evidence

of the contribution to value of the 3<sup>rd</sup> acre for reasons noted above concerning the use of averages. The average of small numbers is influenced by the highest and lowest number in the array. The average sale price would include the 1<sup>st</sup> and 2<sup>nd</sup> acres which based on application of marginal utility should have higher values. The average price of the 3<sup>rd</sup> acre is then influenced by the values that should be assigned to the 1<sup>st</sup> and 2<sup>nd</sup> acres. The average sale price of those parcels 5 to 30 acres in size may, likewise, not be the best indicator of the contribution to value of the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> acres.

Another chart shown at page 5 of Exhibit 15 shows that the average sale price of parcels of farm sales over 30 acres produces a line showing the value per acre to be \$6,500. Those sales were not deemed to be sales of residential parcels and the average sale price would not be unduly influenced by the size of the parcel. There is evidence that the County Assessors assignment of a contributory value of \$6,500 to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> acres is correct.

An appraiser testified that 3 acres was the maximum number of acres found to have residential use in larger parcels. Using the schedule adopted by the county Assessor a 3 acre parcel would be deemed to have a value of \$82,000 ( $\$64,000 + \$9,000 + \$9,000 = \$82,000$ ). Sales of 3 acre parcels range from \$67,000 to \$156,000). (E15:2).

Using the schedule adopted by the County Assessor a 5 acre parcel would be deemed to have a value of \$95,000 as shown above. Sales of five acre parcel range from \$75,000 to \$112,125. (E15:3).

Derivation of the contributory value assigned the 2<sup>nd</sup> acre is simply a mathematical calculation necessary to arrive at a gross value for a 5 acre parcel of \$95,000.

Valuation is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977). There is evidence to support the determinations of the County Assessor that sites contributed value on a sliding scale and that the scale applicable in this instance is \$65,000 for the first acre, \$9,000 for the second acre and third acre, and \$6,500 for each succeeding acre. There is no evidence to support the determinations of the County Board or the Taxpayer. The contribution to value of the sites on the subject property should be determined based on the County Assessor's schedule. The contribution to value of the sites on the subject property is \$70,840. (E10:3)

The Taxpayer argues that because one acre of the subject property cannot be sold for residential purposes that contributory value should not be determined for a residential use. Likewise one acre of the subject property could not be sold for Dry Use. The contributory value assigned to Dry Use land is however, accepted by the Taxpayer. If a parcel has multiple uses each use may have a unique contributory value. Actual value of the parcel is the sum of those contributions. While it may be difficult to estimate with certainty the contributory value of one acre of land used for residential purposes within a larger tract, that does not mean that no attempt should be made to recognize that value.

Property must be assessed based on its actual value or a percentage of its value for agricultural or horticultural purposes. Neb. Rev. Stat. 77-201 (Reissue 2009). Actual value is to be determined based on the highest and best use of the parcel. 350 Neb. Admin. Code, ch. 50, §.00204A (03/15/09). Highest and best use is the most reasonable and probable use of the property that will support the highest present value. 350 Neb. Admin. Code, ch. 10, §001.13 (3/15/09). It is the recognition of the contribution of that specific use to the community

environment or community development goals in addition to wealth maximization of individual property owners. *Id.* “Highest and best use may be defined as follows: the reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.” *The Appraisal of Real Estate*, 13<sup>th</sup> Edition, Appraisal Institute, (2008) at 277. Both definitions require valuation of the use that will maximize value. The lands in the subject property have been classified by the County Assessor in accordance with their uses. Classification lands in a parcel based on actual uses does not offend the Constitution unless those uses do not reflect the highest and best use of the lands in the parcel. 1.76 acres of the lands in the subject property have been classified as sites for buildings. There is no evidence that the classification of some acres as the site of buildings is incorrect or an inappropriate determination of the highest and best use for those acres. Nebraska’s Constitution is not offended by that classification as it is appropriate for a determination of actual value of the parcel.

**V.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.

4. The Taxpayer has adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2009, is vacated and reversed.
2. Taxable value, for the tax year 2009, of the subject property is:

Case No. 09SV 007

Agricultural land	\$ 19,170.00
Farm Site	\$ 64,000.00
Home Site	\$ 6,840.00
Residence	\$ 154,521.00
Outbuildings	\$ 945.00
Total	<u>\$ 245,476.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2010 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on June 1, 2011.

Signed and Sealed. June 1, 2011.

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Nancy J. Salmon, Commissioner

SEAL

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (2010 Cum. Supp.), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**

I concur in the result.

The analysis above considers two standards of review for review. One standard of review is stated as a presumption found in case law the other is found as stated in statute. I do not believe consideration of two standards of review are required by statute or case law.

The Commission is an administrative agency of state government. *See Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000). As an administrative agency of state government, the Commission has only the powers and authority granted to it by statute. *Id.* The Commission is authorized by statute to review appeals from decisions of a county board of equalization, the Tax Commissioner, and the Department of Motor Vehicles. Neb. Rev. Stat. §77-5007 (2010 Cum. Supp.). In general, the Commission may only grant relief on appeal if it is shown that the order, decision, determination, or action appealed from was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

The Commission is authorized to review decision of a County Board of Equalization determining taxable values. Neb. Rev. Stat. §77-5007 (2010 Cum. Supp.). Review of County Board of Equalization decisions is not new in Nebraska law. As early as 1903, Nebraska Statutes provided for review of County Board assessment decisions by the district courts. Laws 1903, c. 73 §124. The statute providing for review did not state a standard for that review. *Id.* A standard of review stated as a presumption was adopted by Nebraska's Supreme Court. See, *State v. Savage*, 65 Neb. 714, 91 N.W. 716 (1902) (citing *Dixon Co. v. Halstead*, 23 Neb. 697, 37 N.W. 621 (1888) and *State v. County Board of Dodge Co.* 20 Neb. 595, 31 N.W. 117 (1887)). The presumption was that the County Board had faithfully performed its official duties and had acted upon sufficient competent evidence to justify its actions. See *id.* In 1959, the legislature provided a statutory standard for review by the district courts of county board of equalization, assessment decisions. 1959 Neb Laws, LB 55, §3. The statutory standard of review required the District Court to affirm the decision of the county board of equalization unless the decision was arbitrary or unreasonable or the value as established was too low. *Id.* The statutory standard of review was codified in section 77-1511 of the Nebraska Statutes. Neb. Rev. Stat. §77-1511 (Cum. Supp. 1959). After adoption of the statutory standard of review, Nebraska Courts have held that the provisions of section 77-5011 of the Nebraska Statutes created a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. See, e.g. *Ideal Basic Indus. V. Nucholls Cty. Bd. Of Equal.*, 231 Neb. 297, 437 N.W.2d 501 (1989). The presumption stated by the Court was the presumption that had been found before the statute was enacted.

Many appeals of decisions made pursuant to section 77-1511 were decided without reference to the statutory standard of review applicable to the district courts review of a county board of equalization's decision. *See, e.g. Grainger Brothers Company v. County Board of Equalization of the County of Lancaster*, 180 Neb. 571, 144 N.W.2d 161 (1966). In *Hastings Building Co., v. Board of Equalization of Adams County*, 190 Neb. 63, 206 N.W.2d 338 (1973), the Nebraska Supreme Court acknowledged that two standards of review existed for reviews by the district court; one statutory requiring a finding that the decision reviewed was unreasonable or arbitrary, and another judicial requiring a finding that a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence was overcome. No attempt was made by the *Hastings* Court to reconcile the two standards of review that were applicable to the District Courts.

The Tax Equalization and Review Commission was created in 1995. 1995 Neb. Laws, LB 490 §153. Section 77-1511 of the Nebraska Statutes was made applicable to review of county board of equalization assessment decisions by the Commission. *Id.* In 2001, section 77-1511 of Nebraska Statutes was repealed. 2001 Neb. Laws, LB 465, §12. After repeal of section 77-1511, the standard for review to be applied by the Commission in most appeals was stated in section 77-5016 of the Nebraska Statutes. Section 77-5016(8) requires a finding that the decision being reviewed was unreasonable or arbitrary. *Brenner v. Banner County Board of Equalization*, 276 Neb. 275, 753 N.W.2d 802 (2008). The Supreme Court has stated that the presumption which arose from section 77-1511 is applicable to the decisions of the Commission. *Garvey Elevators, Inc. V. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.w.2d 518 (2001).

The possible results from application of the presumption as a standard of review and the statutory standard of review are: (1) the presumption is not overcome and the statutory standard is not overcome; (2) the presumption is overcome and the statutory standard is not overcome; (3) the presumption is not overcome and the statutory standard is overcome; (4) and finally the presumption is overcome and the statutory standard is overcome. The first possibility does not allow a grant of relief, neither standard of review has been met. The second possibility does not therefore allow a grant of relief even though the presumption is overcome because the statutory standard remains. *See City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, and the statutory standard remains after the presumption has been overcome. *See id.* The burden of proof to overcome the presumption is competent evidence. *Id.* Clear and convincing evidence is required to show that a county board of equalization's decision was unreasonable or arbitrary. *See, e.g. Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002). Competent evidence that the county board of equalization failed to perform its duties or act upon sufficient competent evidence is not always evidence that the county board of equalization acted unreasonably or arbitrarily because the statutory standard of review remains even if the presumption is overcome. *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). Clear and convincing evidence that a county board of equalization's determination, action, order, or decision was unreasonable or arbitrary, as those terms have been defined, may, however, overcome the presumption that the county board of equalization faithfully discharged its duties and acted on

sufficient competent evidence. In any event, the statutory standard has been met and relief may be granted. Both standards of review are met in the fourth possibility and relief may be granted.

Use of the presumption as a standard of review has been criticized. See G. Michael Fenner, *About Presumptions in Civil Cases*, 17 Creighton L. Rev. 307 (1984). In the view of that author, the presumption should be returned to its roots as a burden of proof. *Id.* Nebraska's Supreme Court acknowledged the difficulty of using two standards of review and classified the presumption in favor of the county board of equalization as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. See *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987). Use of the *Gordman* analysis allows consideration of both the presumption and the statutory standard of review without the difficulties inherent in the application of two standards of review. It is within that framework that I have analyzed the evidence.

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Wm. R. Wickersham, Commissioner

**APPENDIX E**

Testimony by:

November 18, 2011

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Thank you for the opportunity to speak to you today. I would like to talk about the minimally improved process and expanded agricultural land analysis process being used to establish a level of value for agricultural land for statewide equalization.

1) Agricultural land sales with improvements (structures) on the property where the value of the improvements are 5% or less of the sale price:

- a) Past analysis: We used all agland sales and subtracted the assessed value of the improvements from the sale price to calculate what the agland sold for.  
\*\*We went away from this as it did not give a true picture of what agland was selling for.
- b) Through 2009 the assessors used only agland sales of land with no improvements to set land values. Gave a true picture of what agland was selling for.
- c) Beginning in 2010 the Property Tax Administrator (PTA) started including sales with improvements of 5% or less of the sale price. No adjustment for the value of the improvements was deducted to calculate a sales ratio.
- d) I eventually contacted Pete Davis with the Division of Property Valuation, Kansas Department of Revenue. Please see Pages 1-5 and his concerns with this analogy.
- e) I then contacted the IAAO (International Association of Assessing Officials) in Kansas City and asked what would be the correct process to create a sales ratio when there are improvements in the sale. They responded that the Standard on Ratios Studies did not address that but they thought it should. The Technical Standards committee met and added verbiage to Standard of Ratio Studies. See Page 6
- f) Pages 7, 8 9 & 10 is a letter from the Seward County Board of Equalization to the PTA. The attachments are the proposed verbiage, not yet adopted at that time.
- g) Pages 11, 12 & 13: Actual sale of an ag parcel with improvements that fall into the 5% minimally improved category. Steel frame equipment shed with concrete floor, Quonset and 3 grain bins.  
\*\*Under current analysis this sale will be used to determine what agland sells for but no adjustment for the contributory value of the improvements will be made.
- h) Pages 14, 15, 16: Pictures of improvements in Seward County on properties that if sold would more than likely fall under the 5% category. All these building & bins are being used and have value.
- i) We do not always know the intent of the buyer of these properties with improvements on them.

Are they going to 1) tear them down? 2) move them off the property? 3) split off and sell the part where the improvements are? 4) use them? 5) insure them? Then they definitely have value.

## 2) BORROWING SALES:

- a) The decision to borrow sales to set agland values should be the decision of the local assessor who has the statutory responsibility of setting values in their county. Although assessors are using the sales in their counties to set values, the PTA is measuring us differently by borrowing sales from adjacent counties and setting our level of value based on the borrowed sales.
- b) Property Assessment Division's (PAD's) current process borrows sales from adjacent counties for "representativeness" in sales for the 3 year timeframe. Example:

Study year – 7/1/06 – 6/30/07 = 9 Sales  
7/1/07 – 6/30/08 = 21 Sales  
7/1/08 – 6/30/09 = 19 Sales

Total 49 sales in the county.

PAD borrowed 10 sales for the first study year, now to = 19 sales and a Total of 62 sales for their analysis purposes.

Next year example: 7/1/07 – 6/30/08 = 26 Sales  
7/1/08 – 6/30/09 = 23 Sales  
7/1/09 – 6/33/10 = 15 Sales

Total of 64 sales in the county.

PAD borrowed 7 Sales for the newest study year, now to = 22 sales and a total of 71 sales for their analysis purposes. When PAD borrows sales they randomly pick them. If different sales were randomly picked you would have a different outcome.

The part that bothers me is one year it's older sales and the next year it's newer sales. That is going to affect the outcome of the data. I believe the market is what the market is. I had 49 sales in my 3 year study period that told me what the market was in my county.

It is one thing to borrow sales to see if there is intercounty equalization but there are other tools such as looking at the land value groups across county lines that could be factored in. Not all borrowed sales were comparable.

\*\* The level of value set for Seward County was not the level of value for the sales in my county.

The assessors use the actual sales in their counties that represent the market in their counties. Assessors are very knowledgeable about their counties. We also contact our surrounding counties to see where their values are. So we do our own intercounty equalization. It's not perfect and there are times you cannot be close. Markets can be different from county to county and even within a county.

I had an auction (the one on page 11) It sold for \$8,500 an acre, the 2<sup>nd</sup> property that day right across the road sold for \$9,350 an acre and the 3<sup>rd</sup>, a mile away sold for \$7,500 an acre. All irrigated properties.

Four days later, I attended another auction of 3 properties, all dry land, and no irrigation potential. The first one sold for \$9,400 an acre, the 2<sup>nd</sup> for \$6,600 an acre and the 3<sup>rd</sup> for \$5,000 an acre (this one was half pasture).

Pages 17, 18 & 19: A letter to Robert Denne of Almy, Gloudemans, Jacobs & Denne. The second paragraph tells of the Thayer County assessor and what happened in her county this year when PAD borrowed sales.

3) TIME, OR TREND, ADJUSTING SALES: I worry about PAD going in this direction. It would bring the older sales up to today's market values. We currently have in place the use of 3 years of agland sales. We had been using the median (middle ratio of the array of sales) for our level of value.

***State Statute §77-1301. Real property; assessment date; notice of preliminary valuation.***

***(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.***

***(2) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall provide notice of preliminary valuations to real property owners on or before January 15 of each year. Such notice shall be (a) mailed to the taxpayer or (b) published on a web site maintained by the county assessor or by the county.***

***(3) The county assessor shall complete the assessment of real property on or before March 19 of each year, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall complete the assessment of real property on or before March 25 of each year.***

**Source:**Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833, § 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18; Laws 2011, LB384, § 6.

**Operative Date: August 27, 2011**

**77-1301 (1)** states our assessment date is January 1 at 12:01 am as the basis for valuation. We currently base our values for the January 1<sup>st</sup> date on the median of those 3 years of sales. It probably isn't the market of that date, but rather a moving value as we drop off an old year and add a new year each assessment year. It is a process to keep some stabilization to the values. If we were to start to time adjust we could possibility see an up and down trend in values from year to year. With today's market I could see having to adjust my agland values 30% to 40% compared to the increase without the time adjusting.

What will the entities that depend on tax dollars do if valuations fluctuate up and down from year to year because of time adjustments?

## IMPORTANT ISSUES:

- 1) Keep TERC as the entity that performs statewide equalization.  
The Property Assessment Division is the oversight agency for the Assessors and their measurement agency. One entity should not have all the responsibility. There needs to be a democratic process in place for the accountability of checks and balances.
- 2) If using the 5% minimally improved sales, adjust the sale price for the value of the improvements before calculating what the ag land sold for. This would follow the IAAO Standard on Ratio Studies.
- 2) The Assessors should set their values in their county, for their county and be measured on their values.
- 3) The Assessor's level of value should be based on the median of the sales the Assessor has used.
- 4) The Assessors should decide if they need to borrow sales to set their values.
- 5) Do not do time adjustments to sales and keep 3 years in the study period. This could be devastating with up and down values for the taxing entities and for the property owners.
- 6) Finally, it's not always about "the numbers". There has to be logic and common sense factored in.

Pages 20, 21, 22, 23 & 24: Copies of testimony from other assessors.

I sincerely appreciate your time today and consideration of my testimony.

Respectfully,

Marilyn Hladky  
Seward County Assessor

**APPENDIX F**

## LR350 Testimony

Good Morning, Chairperson Cornett and Revenue Committee members, my name is Ruth Sorensen. I am the Property Tax Administrator with the Department of Revenue (Department).

I'm here today to provide you with a brief overview of the statutory requirements of the Department in the valuation and equalization of real property.

The Department is currently responsible for the assessment function in seven counties (Dodge, Dakota, Garfield, Greeley, Harlan, Hitchcock, and Saunders) but will be returning this function to the counties over the next two years (by 2013). The Department is also responsible for the valuation of centrally assessed properties (railroads and public service entities). In addition, the Department is charged with general oversight of the state property tax laws to ensure all real property in the State is being uniformly and proportionately valued.

County assessors are required to annually determine the actual value of all real property in Nebraska as of January 1. There are statutorily authorized exemptions for certain real property.

To ensure all real property is valued uniformly and proportionately, the Legislature authorized the Department to review final decisions of a county board of equalization that relate to real property exemptions.

The legislature also mandated that the Property Tax Administrator develop a state sales file that contains all sales of real property in the state to be used as a resource to provide data that assessors use to ensure all real property is valued uniformly and proportionately. All sales included in the sales file must be deemed to be arms length transactions by the county assessor.

Using the state sales file and other pertinent information, the Property Tax Administrator then evaluates the level of value, quality of assessment, and compliance with assessment requirements for each county. These findings are then submitted to the Tax Equalization and Review Commission (Commission) for statewide equalization purposes.

During statewide equalization (approximately April 7 through August 10), the Commission equalizes the assessed values of real property as submitted by the county assessors on the abstracts of assessments and reported in the Reports and Opinions that are prepared by the department. Section 77-5023 authorizes the Commission to increase or decrease the level of value of a class or subclass to fall at the midpoint of the acceptable range for that class of real property. The acceptable range for residential and commercial property is 92% to 100% of actual value. The acceptable range for agricultural and horticultural land is 69% to 75% of actual value.

If the Commission orders an adjustment to a class or subclass of property in a county, the county assessor must make the adjustments to the assessment roll on or before June 1.

 **LR 350 asks whether or not the comparable sales guidelines in section 77-1371 should be changed or stricken.** This section was originally enacted to help determine whether a sale was an arm's length transaction. However, the statutory guidelines have become outdated and need to be updated. An alternative would be to repeal the specific statutory guidelines and refer to the more stringent guidelines promulgated by Department which must be followed by the county assessors when they determine whether a sale is a qualified sale.

 **Intercounty Equalization**  
Intercounty equalization allows for the use of a larger sample of sales from adjoining counties with similar market characteristics. This promotes the assessment and equalization process and results in distributing valuation more uniform and proportionately. For over 30 years, section 77-1327(5) has required that comparisons be made for both intercounty as well as intracounty equalization purposes. As a result, the Department has advised the county assessors to include sales from similar areas in adjoining counties in their real property valuation process.

Section 77-1327(5) recognizes that equalization does not stop at county lines. School districts, community colleges, NRD's, villages, and other political subdivisions do not stop at county lines but extend into other counties.

Without intercounty equalization, disproportionate valuation can occur. An example is property in a political subdivision (such as a school district) that overlaps into another county. If the two counties where the school district is located do not have similar assessed values, when the tax rate for the school is applied to the higher valued county's properties, those property owners will be paying more tax dollars to support the same school district.

That completes my testimony. Thank you for allowing me to come here today and testify. I will be more than happy to answer any questions you may have.