

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

R & J BAHENSKY FARMS LIMITED PARTNERSHIP,)	
)	
Appellant,)	Case Nos 05A-023, 05A-024, 05A-026, 05A-027, 05A-028, 05A-030, and 05A-033
)	
v.)	
)	
HOWARD COUNTY BOARD OF EQUALIZATION,)	
)	
Appellee.)	
)	
RONALD G. BAHENSKY AND JEANTETTE J. BAHENSKY,)	Case Nos 05A-025, 05A-029, 05A-031, and 05A-032
)	
Appellants,)	
)	
v.)	
)	
HOWARD COUNTY BOARD OF EQUALIZATION,)	DECISION AND ORDER REVERSING AND AFFIRMING THE DECISIONS OF THE HOWARD COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	
)	

The eleven above-captioned cases were called for a hearing on the merits of appeals by R & J Bahensky Farms Limited Partnership and Ronald G. Bahensky and Jeanette J. Bahensky, 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 26, 2006, pursuant to an Order for Hearing and Notice of Hearing issued June 2, 2006, amended August 11, 2006. Commissioners Warnes, Wickersham, Lore, and Hans were present. Commissioner Wickersham presided at the hearing.

Ronald G. Bahensky, General Partner, was present at the hearing on behalf of R & J Bahensky Farms Limited Partnership and individually. In either capacity he is referred to as ("the Taxpayer"). Arend R. Baack was present as legal counsel for R and J Bahensky Farms Limited Partnership and Ronald G. Bahensky.

The Howard County Board of Equalization ("the County Board") appeared through legal counsel, David T. Schroeder, County Attorney for Howard County, Nebraska.

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in the consolidated cases is as follows.

I. ISSUES

The Taxpayer has asserted that taxable value of the subject property as of January 1, 2005, is less than taxable value as determined by the County Board. The issues on appeal related to that assertion are:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

What is taxable value of the subject property?

The Taxpayer has also asserted that taxable value of the subject property as of January 1, 2005, is not equalized with the taxable value of other real property. The issues on appeal related to that assertion are:

Was the decision of the County Board determining taxable value of the subject property unreasonable or arbitrary?

Was taxable value of the subject property determined by the County Board in a manner and an amount that it is uniform and proportionate as required by Nebraska’s Constitution in Article VIII §1?

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of eleven parcels of real property described in the following table ("the subject property").
2. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Howard County Assessor, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 05A-023

Description: E½ Section 5, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$152,490.00	\$131,840.00	\$152,490.00
Total	\$152,490.00	\$131,840.00	\$152,490.00

Case No. 05A-024

Description: W½ except a 2 acre tract in the SW¼ Section 5, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$150,770.00	\$130,560.00	\$150,770.00
Total	\$150,770.00	\$130,560.00	\$150,770.00

Case No. 05A-026

Description: S½NE¼ Section 10, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$94,895.00	\$83,200.00	\$94,895.00
Total	\$94,895.00	\$83,200.00	\$94,895.00

Case No. 05A-027

Description: NW¼ Section 11, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$168,000.00	\$174,000.00	\$168,000.00
Home Site	\$11,000.00	Included in Ag Land	\$11,000.00
Residence	\$20,383.00	Not Protested	\$20,383.00
Farm Site	\$12,000.00	Included in Ag Land	\$12,000.00
Outbuilding	\$5,622.00	Not Protested	\$5,622.00
Total	\$217,005.00	\$174,000.00	\$217,005.00

Case No. 05A-028

Description: NW $\frac{1}{4}$ except 1.17 acres Section 14, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$208,870.00	\$176,960.00	\$208,870.00
Total	\$208,870.00	\$176,960.00	\$208,870.00

Case No. 05A-030

Description: NW $\frac{1}{4}$ except 3.01 acres Section 15, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$166,560.00	\$144,440.00	\$166,560.00
Total	\$166,560.00	\$144,440.00	\$166,560.00

Case No. 05A-033

Description: SW $\frac{1}{4}$ Section 23, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$160,830.00	\$139,200.00	\$160,830.00
Total	\$160,830.00	\$139,200.00	\$160,830.00

Case No. 05A-025

Description: W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 7, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$37,670.00	\$32,960.00	\$37,670.00
Total	\$37,670.00	\$32,960.00	\$37,670.00

Case No. 05A-029

Description: NE¹/₄NE¹/₄, S¹/₂NE¹/₄ Section 15, Township 14, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$137,920.00	\$120,000.00	\$137,920.00
Total	\$137,920.00	\$120,000.00	\$137,920.00

Case No. 05A-031

Description: NW¹/₄ Section 28, Township 15, Range 9, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$75,605.00	\$65,280.00	\$75,605.00
Total	\$75,605.00	\$65,280.00	\$75,605.00

Case No. 05A-032

Description: SE¹/₄ Section 12, Township 14, Range 10, Howard County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$74,260.00	\$65,920.00	\$74,260.00
Total	\$74,260.00	\$65,920.00	\$74,260.00

3. Appeals of the County Board's decisions were filed with the Commission.
4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The appeals were consolidated for hearing by order of the Commission.
6. An Amended Order for Hearing and Notice of Hearing issued on June 2, 2006, amended August 11, 2006, set a hearing of the appeals for September 26, 2006, at 10:00 a.m. CDST.

7. 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.
8. Taxable value of each parcel as of the assessment date for the tax year 2005 is:

Case No. 05A-023

Agricultural land	\$152,490.00
Total	<u><u>\$152,490.00</u></u>

Case No. 05A-024

Agricultural land	\$150,770.00
Total	<u><u>\$150,770.00</u></u>

Case No. 05A-026

Agricultural land	\$58,595.00
Total	<u><u>\$58,595.00</u></u>

Case No. 05A-027

Agricultural land	\$108,400.00
Home Site	\$ 11,000.00
Residence	\$ 20,383.00
Farm Site	\$ 12,000.00
Outbuilding	\$ 5,622.00
Total	<u><u>\$157,405.00</u></u>

Case No. 05A-028

Agricultural land	\$117,930.00
Total	<u><u>\$117,930.00</u></u>

Case No. 05A-030

Agricultural land	\$109,000.00
Total	<u><u>\$109,000.00</u></u>

Case No. 05A-033

Agricultural land	\$106,545.00
Total	<u><u>\$106,545.00</u></u>

Case No. 05A-025

Agricultural land	\$37,670.00
Total	<u><u>\$37,670.00</u></u>

Case No. 05A-029

Agricultural land	\$86,210.00
Total	<u><u>\$86,210.00</u></u>

Case No. 05A-031

Agricultural land	\$75,605.00
Total	<u><u>\$75,605.00</u></u>

Case No. 05A-032

Agricultural land	\$74,260.00
Total	<u><u>\$74,260.00.</u></u>

III. APPLICABLE LAW

1. “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 2003).
2. 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 2003).
3. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
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 2003).
6. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
7. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
8. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. 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. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).
9. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses,

- swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
10. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
 11. “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
 12. Equalization to achieve proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).
 13. 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).
 14. 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).

15. 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).
16. Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.” *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534, (1983).
17. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
18. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
19. 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) (citations omitted)

20. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
21. "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).
22. 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).
23. 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).
24. "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).
25. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

IV. DISCUSSION

The subject property, with the exception of one parcel, is unimproved agricultural land and horticultural land. The contributions to value of the improvements and of the land on which the improvements are located are not disputed in the appeals to the Commission. Various parcels of the subject property are primarily devoted to grassland use while others are primarily used as irrigated crop land. Identical challenges to taxable value were made for all parcels.

A soil survey has been performed for Howard County. *Soil Survey of Howard County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, (1974). Soil types 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 (Revised Reissue 2003). The result is that soil types which are alike will be converted to like subclasses, of agricultural land and horticultural land called Land Capability Groups ("LCGs"). Lands used as irrigated crop land are categorized 1A, or 1A1 etc., those used as dry crop land are 1D, 1D1 etc. land used as grassland is categorized as 1G, or 1G1 etc. 350 Neb. Admin. Code, ch14 §004.08H (03/04). If the use of a parcel changes then the LCG changes to reflect that change, it does but not change the relative quality of the parcel. For Example 1G grassland converted to irrigated crop land becomes 1A. See, Property Tax Administrator Directive 99-8 issued December 30, 1999. LCGs can therefore, because of their definitions and criteria be used to make comparisons between parcels based on use and soil type.

Taxable Value (80% of Actual) Grassland Parcels

The Taxpayer has challenged taxable value determined for the agricultural land and horticultural land as derived from 80% of its actual value. The Taxpayer offered the property record files for various parcels found in the Assessor's sales file as Exhibits 26 through 41. Parcels described in Exhibits 28 and 31 are not analyzed below because the Taxpayer represented that in various respects they were not comparable to grasslands in the subject property. Parcels described in Exhibits 29, 30, 33, 34, 36, 37, 38, 40, and 41 were not comparable to the subject property's grasslands at the time of their sale or as of the assessment date.

The Taxpayer testified that the parcel described in Exhibit 32 was used as grassland when sold and that it was converted to use as irrigated crop land prior to the assessment date. The sales data sheet shows the parcel consisted of 76.1 acres irrigated crop land and 3.9 acres of misc use on its date of sale. (E32:1). As of the assessment date the parcel was assessed as 76.1 acres of irrigated crop land and 3.9 acres of misc uses. (E32:2). The property record card contains a notation "corrected ag per FSA 2004 ND". (E32:2). Taxable value of the unimproved parcel increased significantly for the tax year 2004. (E32:3). Values shown in its historical valuation information for the parcel are consistent with the testimony of the Taxpayer.

The Property Tax Administrator has promulgated rules and regulations pertaining to development of a sales file to be used by assessors to develop taxable values. See. 350 Neb. Admin. Code, ch 12 (03/04). An issue addressed in the regulations is the identification of a sale that can be accepted as a "qualified sale" that is one that should be considered in the valuation process. 350 Neb. Admin. Code, ch 12 §§ 002.10 and 002.11 (03/04). One type of non-

qualified sale is one where the property as assessed is significantly different from the property as it was when sold. 350 Neb. Admin. Code, ch 12 §002.10 (03/04). Further the Property Tax Administrator has issued guidance interpreting the definition of a non-qualified sale. See, Property Tax Administrator Directive 05-8 issued September 9, 2005. That directive, while issued after the assessor determined taxable values for the assessment date at issue in this appeal, can be considered by the Commission because it is not bound by the assessor's determinations. The directive clearly indicates that a conversion from grassland to dry or irrigated use may be considered a substantial change. *Id.* A change from dry crop land use to irrigated crop land would be analyzed similarly. The Property Tax Administrator's rule and regulation and directive have two purposes: 1) The exclusion of a sale if it would be necessary to artificially value the property in the sales file to reflect a change, i.e. use, thereby creating a disconnect between the assessed value of the property as of an assessment date and the value reported in the sales file as of the date of sale and; 2) The prevention of an error in measurement by eliminating parcels whose assessed value cannot be used for measurement without adjusting the assessed value. *Id.*

The sales file has multiple uses. When used to establish actual value for a LCG of a particular use the inclusion of sales that reflect value that can be attributed to a different use could have an undesirable affect on actual value determinations. The concerns expressed by the Property Tax Administrator are no less compelling when an effort is being made to find comparable sales from which an indication of actual value may be derived. A change to irrigated use would necessarily involve additional investment after purchase of the parcel to be developed. That investment and the resulting production potential substantially affects actual

value as can be seen in the table presented as Exhibit 12 showing the actual values of various land uses.

The Taxpayer's uncontroverted testimony is that the grassland parcels of the subject property do not have irrigation potential. There is no evidence concerning the adjustment necessary to compensate for the irrigation potential of the a grassland parcel that was sold and then converted to irrigated crop land. The Commission does not consider analysis of the sale of the parcel described in Exhibit 32 which had irrigation potential at the time of its sale appropriate to a determination of the actual or taxable value of the grassland parcels of the subject property.

The Taxpayer testified that the parcels described in Exhibits 26 and 27 were comparable to the grassland parcels of the subject property. The County Board in Exhibit 47 offered information describing parcels it considered comparable. The grassland parcels in Exhibit 47 are found at pages 1 and 10. Those parcels are also described in the Taxpayer's Exhibits 35 and 39. The Commission has determined that the parcels described in Exhibits 26, 27, 38, and 39 are comparable to the grassland parcels of the subject property.

The following table displays land capability group ("LCG") designations for the grassland parcels subject to appeal and those deemed by the Commission to be grassland comparables. The parcels are identified by the Exhibit Number and the Exhibit page containing the designations. LCGs are identified in the left column. Numeric entries are the acreage for each LCG as shown for the parcel. The parcels described in Exhibits 13, 14, 15, 21 and 22 are parcels of the subject property. The parcels described in Exhibits 26, 27, 35, and 39 are comparables as determined by the Commission.

Grassland Table

Ex:Pg LCG	Parcels of the Subject Property					Parcels of Comparable Property			
	13:3	14:3	15:3	21:3	22:3	26:5,8,11,14	27:4	35:5	39:4
1G1		3							
1G	15	11							
2G		11					7		
3G1	26	19	6	7		13	9		1
3G		7		33				4	
4G	274	259	73	115	158	359	169	151	78
Waste				5	2	16			
Road	4	8	1			4	5	2	1
Home						1		1	
Farm						3		2	
Total	319	318	80	160	160	396	190	160	80

The parcels described in Exhibits 13 and 14 are comparable to each other. The parcels described in Exhibits 13 and 14 are not comparable to the other parcels of the subject property or the comparables because they contain larger percentages of land in the 1G, 1G1, or 2G1 LCGs, which have higher production capabilities.

The parcel described in Exhibit 26 was not improved at time of sale. (E26:1). Improvements were placed on land previously classified as 4G after the parcel's sale. (E26:1 and 5). The parcel as described in Exhibit 26 will be analyzed as a sale of unimproved grassland composed of 13 acres of 3G, 359 acres of 4G, 16 acres of waste, and 4 acres of roads. (E26:1).

The parcel described in Exhibit 35 was not improved at time of sale. (E35:1). The improvements were placed on lands classified as 4G. (E35:1 and 4). It was comparable to the subject grasslands at time of sale and will be analyzed on that basis because the only issue on appeal is the contribution to value of the unimproved land.

The parcels described in Exhibits 26, 27, 35, and 39 may be discussed as comparables to the grassland parcels of the subject property described in Exhibits 15, 21, and 22 based on their LCG classifications. The average sale price per acre of agricultural land and horticultural land in the comparable parcels described in Exhibits 26, 27, 35, and 39 were \$510.00, \$421.00, \$613.00 and \$618.00 respectively and the median sale price per acre is \$561.50. The average sale price per acre was \$540.50. The average actual values per acre of agricultural land and horticultural land indicated by the taxable values assigned to the parcels described in Exhibits 15, 21, and 22 based on a ratio of taxable to actual value of 80% as required by statute are \$596.00, \$591.00, and \$588.00 respectively.

The Taxpayer testified that: actual value of the parcel described in Exhibit 15 was not over \$500.00 per acre; actual value of the parcel described in Exhibit 21 was \$450.00 per acre; and actual value of the parcel described in Exhibit 22 was not over \$500.00 per acre. The opinion of the Taxpayer is not supported by the sales shown in Exhibits 26, 27, 35, and 39.

Taxable Value (80% of Actual) Irrigated Parcels

The Taxpayer, as noted above, offered Exhibits 26 through 41 describing various parcels. Parcels described in Exhibits 26, 27, 28, 31, 35, and 39 were not comparable to the irrigated parcels of the subject property on their sale dates or the assessment date. The Taxpayer testified that the parcels described in Exhibits 29, 30, 32, 33, 34, 38, and 41 were

converted to irrigated crop land after purchase. The Taxpayers testimony concerning conversion of the parcels described in Exhibits 29 and 34 to irrigated use is reflected by the Assessor's records. (E29 and 34). The Assessor's records do not reflect a conversion of the parcels 33 and 41 to irrigated use. The parcel described in Exhibit 32 has been discussed above. The parcel described in Exhibit 38 has the same fact pattern as discussed for the parcel described in Exhibit 32, an Assessor's record showing irrigated use at time of sale and as of the assessment date but a substantial change in value for tax year 2004 without addition of improvements. (E38:1,2, and 3). The Taxpayer testified that the parcels described in Exhibits 30, 33, and 41 were converted to irrigated use after purchase. The Assessor's records do not reflect a conversion.

There is no evidence concerning the adjustment necessary to compensate for the irrigation potential of the a grassland or dry crop land parcel that was sold and then converted to irrigated crop land. For reasons stated above the Commission will not consider the parcels described in Exhibits 29, 30, 32, 33, 34, and 39 as comparables for the purpose of determining actual or taxable value of the irrigated crop land parcels of the subject property.

The parcel described in Exhibit 40 has a higher proportion of dry crop land use than any of the subject parcels and is not a comparable property for determination of actual or taxable value for irrigated crop land parcels of the subject property. Additional discussion of the parcel described in Exhibit 40 is present in the equalization section of this order.

The County Board in Exhibit 47 offered information describing parcels it considered comparable to the irrigated crop land parcels of the subject property. The irrigated crop land

parcels in Exhibit 47 are found at pages 3 and 5. Those parcels are also described in the Taxpayers Exhibits 36 and 37.

Land classifications for the parcel described in Exhibit 37 show that 16.25% percent of its 160 acres are used as grass land ($26 \div 160$) and 79.38% ($127 \div 160$) of the parcel is classified 4A. (E37:4). None of the subject parcels share the noted characteristics.

The following table shows LCGs applicable to the irrigated parcels of the subject property and parcels of irrigated land which had sold. The parcels described in Exhibits 16, 17, 18, 19, 20, and 23 are parcels of the subject property. The parcel described in Exhibit 36, is comparable to parcels of the subject property as determined by the Commission.

Irrigated Parcels

Ex:Pg LCG	Parcels of the Subject Property						Comparable Parcel
	16:3	17:4	18:3	19:3	20:3	23:3	
1A1			26	3			
1A	10	9	43		3	14	33
2A1		7	57	32	42		54
2A	20	6					6
3A1	38	85	8	60	53	78	23.07
3A						15	
4A1		38					
4A	10		17	21	43	30	7
2D1							6
3D1					4		4
4D1		2					

Ex:Pg LCG	Parcels of the Subject Property						Comparable Parcel
	16:3	17:4	18:3	19:3	20:3	23:3	36:4
3G1			3			3	3
4G					4	7	
Shelter					4		
Waste	1						
Road	1	4	4.3	4	4	3	4
Home		1					
Farm		8					
Total	80	160	158.3	120	157	150	140.07

The parcel described in Exhibit 36 is most similar to the parcel of the subject property described in Exhibit 18 based on land classifications as shown in the table above. The Taxpayer testified, however, that the sale of the parcel described in Exhibit 36 included a mile of gated pipe. The form 521 reporting sale of that parcel does not disclose a sale of gated pipe in conjunction with a sale of the land. (E47:4). The Taxpayer testified that the Parcel described in Exhibit 18 had an actual value of \$1,400.00 per acre as of the assessment date. The parcel described in Exhibit 36 sold for a unit value of \$2,058 per acre of agricultural land and horticultural land. (E36:1).

The evidence does not support the Taxpayer’s contention that the irrigated parcels of the subject property were not assessed at 80% of actual value.

Equalization

The remaining contention of the Taxpayer is that the taxable value of the subject property is not equalized with the taxable value of other agricultural land and horticultural land

in Howard County. Nebraska's Constitution requires that taxes be levied by valuation uniformly and proportionately. *Neb. Const.*, art. VIII, §1. Proportionality can be determined through a comparison of the ratio of taxable to actual value for a parcel with the ratio of taxable value to actual value of another parcel. *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). Courts in Nebraska have on review of equalization claims, placed a burden on 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) *sic* result of systematic will or failure of a plain legal duty, and not mere error of judgement." *Scribante v. Douglas County Board of Equalization*, 8 Neb. App. 25, 36, 588 N.W.2d 190, 197 (1999). For tax year 2005 the Assessor had responsibility for the valuation of 338,832,520 acres of agricultural land and horticultural land. *Reports and Opinions of the Property Tax Administrator for Howard County*, pg 68 (2005). Those acres are spread out through 2,859 parcels. *Supra.* pg 68. In addition the Assessor was required to value 2,809 other parcels of residential or commercial real property. *Supra.* 58. Perhaps in recognition of the many opportunities for error or the legitimate exercise of discretion the Courts have recognized that mathematical precision is not required in the valuation or equalization process. *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956).

Misclassification of property may result in a taxable value that is not uniform and proportionate. *Beynon Farm Products Corporation v. Board of Equalization of Gosper*

County, 213 Neb. 815, 331 N.W.2d 531, (1983). In *Beynon* the Nebraska Supreme Court determined that a taxpayer was entitled to relief because 15 acres of land classified as irrigated farmland were in fact wasteland and that those 15 acres were not therefore assessed uniformly and proportionally with similar land. *Id.* There is no evidence that any part of the subject property has been misclassified. The evidence in this case concerns misclassification of other parcels in the County.

The County Board is required to act when necessary to equalize taxable values. Neb. Rev. Stat. §77-1501 (Cum. Supp. 2004). The rationale for that authority has been clearly and succinctly expressed by the Nebraska Supreme Court. “In all schemes of taxation there are generally recognized elements of inequality and the probability of erroneous valuations in the assessment of property by whatever mode the assessment may be made. The evil is usually remedied by the exercise of the authority of a board created for that purpose, whereby the assessment of different properties is brought to a common standard of value.” *State ex rel. Morton v. Back*, 72 Neb. 402, 406, 100 N.W. 952, 954 (1904). The County Assessor is required to report undervalued lands to the County Board. Neb. Rev. Stat. §77-1315.01 (Cum. Supp. 2004). The County Board may adjust the value of undervalued parcels. Neb. Rev. Stat. 77-1504 (Supp. 2005).

The Taxpayer testified that after purchase, use of the parcels described in Exhibits 30, 33, and 41 changed to irrigated use and that the change was not reflected in their assessment as of January 1, 2005.

The Taxpayer testified that the parcel described in Exhibit 41 lies across the road from a parcel of the subject property. The parcel described in Exhibit 41 was used for dry crop land at

the time of its sale in 2003. The Taxpayer testified that immediately after purchase the buyer placed a center pivot on the parcel and began to produce irrigated crops. The Taxpayer further testified that he had advised the assessor that the parcel described in Exhibit 41 was misclassified and that the error was not corrected for the 2005 tax year. A photo taken by the Taxpayer with a date stamp of June/1/06 shows a center pivot on the parcel described in Exhibit 41. (E41:5 & 6). The property record file for that parcel shows that it was assessed as dry crop land for the tax year 2005. (E41: 4).

Similarly, the Taxpayer testified that the parcel described in Exhibit 30 was used as grassland and dry cropland at the time of its sale in 2003. The Taxpayer also testified that a pivot was placed on the parcel converting its use to irrigated crop land in the spring of 2004 or very definitely in the spring of 2005. A notation on the property record file indicates that “ag” was corrected per FSA in 2004. (E30:2). No evidence was presented to give that notation context or describe its significance. A photo taken by the taxpayer with a date stamp of June/1/06 showing a center pivot on the parcel described in Exhibit 30 was received. (E30: 5 & 6). The parcel described in Exhibit 30 was assessed as dry crop land and grass land for the tax year 2005. (E30:4).

The Taxpayer’s testimony concerning the parcel described in Exhibit 33 is ambiguous. That parcel was classified for the tax year 2005 as dry crop land and grassland. (E33:4). The taxpayer testified that the parcel had been irrigated for the last two crop years. If the reference was to crop years 2006 and 2005, the status of the property on January 1, 2005 is unknown. If the reference is to crop years 2005 and 2004, the parcel was used as irrigated land as of January 1, 2005.

The Taxpayer testified that the parcel described in Exhibit 40 was not properly classified for the tax year 2005. The Taxpayer testified that the parcel described in Exhibit 40 was entirely irrigated crop land and had been since prior to the time of its sale in 2003. At the time of sale the Assessor had 23% of the parcel classified as dry crop land. (E40:1). That classification is consistent with the Taxpayer's testimony concerning some pivots and dry corners. The parcel described in Exhibit 40 is tract #1 of several tracts identified for sale at auction in a sale bill received as Exhibit 40 at page 5. The parcel is described in the sale bill as irrigated with 4 wells and having 163.4 acres of crop land. The Assessor's records show 156 acres of crop land in a 160 acre tract. (E40:1 and 4).

The Taxpayer testified that he had spent a considerable amount of time in the Assessor's office after receiving notices of valuation changes. Each one of the protests filed by the Taxpayer make some reference to incorrect land use assigned to parcels in the sales roster.

The County Board has offered no evidence to refute the Taxpayer's evidence and the Commission has been given no reason to doubt the credibility of the Taxpayer. The Taxpayer's protests were filed with the County Board on June 25, 2005. (E1-11). The County Board heard the protests on June 28, 2005, and made its decisions on July 7, 2005. (E1-11). The Taxpayer's evidence is that the Assessor and County Board were aware of the improper classification of the parcel described in Exhibit 41 prior to July 25, 2005. A process was available to the Assessor and County Board for correction of the assessment of the parcel described in Exhibit 41 prior to July 25, 2005. Neb. Rev. Stat. §77-1315.01 (Cum. Supp 2004) and Neb. Rev. Stat. §77-1504 (Supp 2005). Failure to act in this instance was a plain failure to discharge a legal duty. The Taxpayer has proven that relief may be granted. See, *Scribante v.*

Douglas County Bd. of Equalization, 8 Neb.App. 25, 588 N.W.2d 190 (1999). The irrigated parcels of the subject property have not been valued uniformly with the parcel described in Exhibit 41. That parcel was classified as dry crop land despite the fact that it was being used as irrigated cropland. The remedy if a lack of equalization is shown is a taxable value that reflects the lowest equalized value. See, *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). All of the subject property is located in market area 7100 of Howard County as are all of the comparables. A table showing the values assigned to various LCGs for the tax year 2005 in market area 7100 was introduced as Exhibit 12. The following tables illustrate the results if the irrigated parcels of the subject property, identified by case number, are valued as dry cropland at the values stated in Exhibit 12 for market area 7100 as was the irrigated land contained in the parcel described in Exhibit 30.

Case No. 05A-26

LCG E16:3	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A	10	1,490	14,900	1D	800	8,000
2A	20	1,300	26,000	2D	755	15,100
3A1	38	1,200	45,600	3D1	750	28,500
4A	10	830	8,300	4D	690	6,900
Waste	1	95	95	Waste	95	95
Road	1	0	0	Road	0	0
Total	80		94,895			58,595

Case No. 05A-27

LCG E17:4	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A	9	1,490	13,410	1D	800	7,200
2A1	7	1,370	9,590	2D1	760	5,320
2A	6	1,300	7,800	2D	755	4,530
3A1	85	1,200	102,000	3D1	750	63,750
4A1	38	890	33,820	4D1	690	26,220
4D1	2	690	1,380	4D1	690	1,380
Road	4	0	0	Road	0	0
Home	1	11,000	11,000	Home	11,000	11,000
Farm	8	1,500	12,000	Farm	1,500	12,000
Total	160		191,000			131,400

Case No. 05A-28

LCG E18:3	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A1	26	1,550	40,300	1D1	800	20,800
1A	43	1,490	64,070	1D	800	34,400
2A1	57	1,370	78,090	2D1	760	43,320
3A1	8	1,200	9,600	3D1	750	6,000
4A1	17	890	15,130	4D1	690	11,730
3G1	3	560	1,680	3G1	560	1,680
Road	4.3	0	0	Road	0	0
Total	158.3		208,870			117,930

Case No. 05A-29

LCG E19:3	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A1	3	1,550	4,650	1D1	800	2,400
2A1	32	1,370	43,840	2D1	760	24,320
3A1	60	1,200	72,000	3D1	750	45,000
4A	21	830	17,430	4D	690	14,490
Road	4	0	0	Road	0	0
Total	120		137,920			86,210

Case No. 05A-30

LCG E20:3	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A	3	1,490	4,470	1D	800	2,400
2A1	42	1,370	57,540	2D1	760	31,920
3A1	53	1,200	63,600	3D1	750	39,750
4A	43	830	35,690	4D	690	29,670
3D1	4	750	3,000	3D1	750	3,000
4G	4	470	1,880	4G	470	1,880
Shelter	4	95	380	Shelter	95	380
Road	4	0	0	Road	0	0
Total	157		166,560			109,000

Case No. 05A-33

LCG E23:3	Acres	Assessed/Acre	Assessed Value	LCG Equalized	Assessed/Acre	Equalized Value
1A	14	1,490	20,860	1D	800	11,200
3A1	78	1,200	93,600	3D1	750	58,500
3A	15	1,100	16,500	3D	745	11,175
4A	30	830	24,900	4D	690	20,700
3G1	3	560	1,680	3G1	560	1,680
4G	7	470	3,290	4G	470	3,290
Road	3	0	0	Road	0	0
Total	150		160,830			106,545

The Taxpayer is required to show that the difference between Taxable values as determined by the County Board and Taxable values as shown on appeal represents more than a mere difference of opinion or when compared with other similar property is grossly excessive. *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999). The Taxpayer has met that burden. A Taxpayer is entitled to have property assessed uniformly and proportionately with other similar property, even though the result may be that it is assessed at less than actual value. *Konicek v. Board of Equalization of Colfax County*, 212, Neb. 648, 324 N.W.2d 815 (1982). The Taxpayer is entitled to have the taxable value of his irrigated crop land uniformly assessed as dry crop land even though the result is assessment at less than 80% of its actual value.

**V.
CONCLUSIONS OF LAW**

1 The Commission has subject matter jurisdiction in this appeal.

2. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
3. The Commission has jurisdiction over the parties to this appeal.
4. The Taxpayer has adduced sufficient, clear and convincing evidence that decisions of the County Board determining taxable value in Case Nos 05A-026, 05A-027, 05A-028, 05A-029, and 05A-033 were unreasonable or arbitrary, and should be vacated and reversed. The decisions of the County Board in Case Nos 05A-023, 05A-024, 05A-025 should be affirmed

**VI.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are affirmed in Case Nos 05A-023, 05A-024, 05A-025, 05A-031, and 05A-032, and vacated and reversed in Case Nos 05A-026, 05A-027, 05A-028, 05A-029, 05A-30, and 05A-033.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No. 05A-023	
Agricultural land	\$152,490.00
Total	<u><u>\$152,490.00</u></u>

Case No. 05A-024

Agricultural land	\$150,770.00
Total	<u><u>\$150,770.00</u></u>

Case No. 05A-026

Agricultural land	\$58,595.00
Total	<u><u>\$58,595.00</u></u>

Case No. 05A-027

Agricultural land	\$108,400.00
Home Site	\$ 11,000.00
Residence	\$ 20,383.00
Farm Site	\$ 12,000.00
Outbuilding	\$ 5,622.00
Total	<u><u>\$157,405.00</u></u>

Case No. 05A-028

Agricultural land	\$117,930.00
Total	<u><u>\$117,930.00</u></u>

Case No. 05A-030

Agricultural land	\$109,000.00
Total	<u><u>\$109,000.00</u></u>

Case No. 05A-033

Agricultural land	\$106,545.00
Total	<u><u>\$106,545.00</u></u>

Case No. 05A-025

Agricultural land	\$37,670.00
Total	<u><u>\$37,670.00</u></u>

Case No. 05A-029

Agricultural land	\$86,210.00
Total	<u><u>\$86,210.00</u></u>

Case No. 05A-031

Agricultural land	\$75,605.00
Total	<u><u>\$75,605.00</u></u>

Case No. 05A-032

Agricultural land	\$74,260.00
Total	<u><u>\$74,260.00.</u></u>

3. This decision, if no appeal is timely filed, shall be certified to the Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
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 2005.

7. This order is effective for purposes of appeal November 17, 2006.

Signed and Sealed. November 17, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

Robert L. Hans, Commissioner

William C. Warnes, Commissioner

SEAL

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.