

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

WAYNE S. RASMUSSEN,	)	
	)	
Appellant,	)	Case Nos. 07A-099, 07A-100, 07A-101,
	)	07A-102, 07A-103, 07A-139, 07A-140,
v.	)	07A-141, 07A-142 & 07A-143
	)	
DAKOTA COUNTY BOARD OF	)	DECISION AND ORDER
EQUALIZATION,	)	REVERSING THE DECISIONS OF
	)	THE DAKOTA COUNTY BOARD OF
Appellee.	)	EQUALIZATION IN PART AND
		DISMISSING IN PART

The above-captioned cases were called for a hearing on the merits of appeals by Wayne S. Rasmussen ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Holiday Inn Express, 920 S 20th St., Norfolk, NE, Nebraska, on October 7, 2008, pursuant to an Order for Hearing and Notice of Hearing issued July 25, 2008. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Wickersham was the presiding hearing officer. Commissioner Hotz was excused from participation by the presiding hearing officer. The appeal was heard by a panel of three commissioners pursuant to 442 Neb. Admin. Code, ch. 4, §011 (10/07).

Wayne S. Rasmussen was present at the hearing with Clifford T. Lee as legal counsel.

Kim Watson, County Attorney for Dakota County, Nebraska, was present as legal counsel for the Dakota 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 (Cum. Supp. 2006). 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, 2007, 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, 2007.

**II.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeals to maintain them.
2. The parcels of real property to which the above captioned appeals pertain are ("the Subject Property") are described in the tables below.
3. Taxable value of each parcel of the subject property placed on the assessment roll as of January 1, 2007, ("the assessment date") by the Dakota 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. 07A-099

Description: S½SW¼ except cemetery and except 10 acre tract in the SE¼SW¼ lying North and West of Co. Rd. and except Public Road Section 2, Township 28 North , Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$97,260.00	\$59,287.40	\$97,260.00
Total	\$97,260.00	\$59,287.40	\$97,260.00

Case No. 07A-100

Description: N½SW¼ Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$101,925.00	\$66,605.00	\$101,925.00
Total	\$101,925.00	\$66,605.00	\$101,925.00

Case No. 07A-101

Description: NW¼NE¼ Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$57,180.00	\$37,610.00	\$57,180.00
Total	\$57,180.00	\$37,610.00	\$57,180.00

Case No. 07A-102

Description: SE¼SE¼ & part of N½ SE¼, lying South of Ctr line of Minnow Creek, Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$90,905.00	\$55,682.50	\$90,905.00
Total	\$590,905.00	\$55,682.50	\$90,905.00

Case No. 07A-103

Description: SW¼SE¼ Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$54,515.00	\$34,390.00	\$54,515.00
Total	\$54,515.00	\$34,390.00	\$54,515.00

Taxable value of each parcel of the subject property as proposed by the County Board of Equalization for Dakota County, value as proposed in timely protests, and taxable value as determined by the County Board is shown in the following tables:

Case No. 07A-139

Description: S½SW¼ except cemetery and except 10 acre tract in the SE¼SW¼ lying North and West of Co. Rd. and except Public Road Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$97,260.00	\$59,287.40	\$97,260.00
Total	\$97,260.00	\$59,287.40	\$97,260.00

Case No. 07A-140

Description: N½SW¼ Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$101,925.00	\$66,605.00	\$101,925.00
Total	\$101,925.00	\$66,605.00	\$101,925.00

Case No. 07A-141

Description: NW¼NE¼ Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$57,180.00	\$37,610.00	\$57,180.00
Total	\$57,180.00	\$37,610.00	\$57,180.00

Case No. 07A-142

Description: SE¼SE¼ & part of N½ SE¼, lying South of Ctr line of Minnow Creek, Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$90,905.00	\$55,682.50	\$90,905.00
Total	\$590,905.00	\$55,682.50	\$90,905.00

Case No. 07A-143

Description: SW¼SE¼ Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$54,515.00	\$34,390.00	\$54,515.00
Total	\$54,515.00	\$34,390.00	\$54,515.00

4. Appeals of the County Board's decisions were filed with the Commission.

5. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
6. The appeals were consolidated for hearing by order of the Commission.
7. An Order for Hearing and Notice of Hearing issued on July 25, 2008, set a hearing of the appeals for October 7, 2008, at 1:00 p.m. CDST.
8. 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.
9. Taxable value of each parcel for the tax year 2007 is:

Case No. 07A-099

Agricultural land	\$ 59,287.00
Total	<u>\$ 59,287.00</u>

Case No. 07A-100

Agricultural land	\$ 65,515.00
Total	<u>\$ 65,515.00</u>

Case No. 07A-101

Agricultural land	\$ 37,030.00
Total	<u>\$ 37,030.00</u>

Case No. 07A-102

Agricultural land	\$ 55,545.00
Total	<u>\$ 55,545.00</u>

Case No. 07A-103

Agricultural land	\$ 34,200.00
Total	<u>\$ 34,200.00.</u>

**III.  
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in each of the above captioned appeals is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Supp. 2007).
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 2003).
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 2003).
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 agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2006).
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) (Cum. Supp. 2006).
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) (Cum. Supp. 2006).
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) (Cum. Supp. 2006).
10. "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.
  11. Equalization to obtain 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).
  12. 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).
  13. 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).
  14. 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).

15. 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).
16. 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).
17. 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).
18. 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).
19. The presumption disappears if there is competent evidence to the contrary. *Id.*

20. 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) (Cum. Supp. 2006).
21. Proof that the order, decision, determination, or action 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).
22. "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).
23. 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).
24. 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).
25. "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).
26. 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).

27. 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).
28. 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 values); and *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

All parcels comprising the subject property are unimproved parcels of agricultural land and horticultural land. For tax year 2006 the subject property was located in Market Area 2 as defined by State Assessment Manager for Dakota County. For tax year 2007 the subject property was located in Market Area 3 as defined by the State Assessment Manager for Dakota County. For tax year 2007 values assigned to various classifications of agricultural land and horticultural land in Market Area 3 exceeded the values assigned to the same classifications in Market Area 2. The Taxpayer contends in all of the above captioned appeals that the boundaries of Market Area 3 were not determined in accordance with the law and that as a result taxable values for the

parcels comprising the subject property are not equalized with comparable parcels in Market Area 2.

The State of Nebraska has assumed the assessment function in Dakota County and a state employee denominated as the State Assessment Manager carries out the duties of a County Assessor for Dakota County. Each County Assessor is required to mail notice of any change in taxable value from a prior year for a current year on or before June 1 each year. Neb. Rev. Stat. §77-1315 (Cum. Supp. 2006). In these appeals it was the duty of the State Assessment Manager to make the required mailing. Neb. Rev. Stat. §77-115 (Reissue 2003). For tax year 2007 the required notices were postmarked after June 1. The Taxpayer received notices of valuation changes as proposed by the State Assessment Manger for Dakota County. The Taxpayer protested the taxable values as proposed by the State Assessment Manager for Dakota County. (E1, 2, 3, 4, and 5). The Commission finds that the Taxpayer's filed protests waived late mailing of the notices of changed taxable value. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 489 (1954). The County Board considered the Taxpayer protests and made its determinations on July 24, 2007. (E1, 2, 3, 4, and 5). The Taxpayer timely appealed the determinations of the County Board to the Commission. Files for Case Nos. 07A-099, 07A-100, 07A-101, 07A-102, 07A-103. The appeals in Case Nos. 07A-099, 07A-100, 07A-101, 07A-102, 07A-103 are properly before the Commission.

A market area constitutes a subclass of real property. See, *Vanderheiden v. Cedar County Board of Equalization*, 16 Neb.App. 578, N.W.2d 717 (2008). A class or subclass of real property is a group of properties that share one or more characteristics typically common to all the properties in the class or subclass, but are not typically found in the properties outside the

class or subclass. Class or subclass includes, but is not limited to, the classifications of agricultural land or horticultural land listed in section 77-1363 of Nebraska Statutes, parcel use, parcel type, location, geographic characteristics, zoning, city size, parcel size, and market characteristics appropriate for the valuation of such land. A class or subclass based on market characteristics shall be based on characteristics that affect the actual value in a different manner than it affects the actual value of properties not within the market characteristic class or subclass. Neb. Rev. Stat. §77-103.01 (Reissue 2003). The classes and subclasses of agricultural land and horticultural land designated in section 77-1363 are irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards. Neb. Rev. Stat. §77-1363 (Cum. Supp. 2006). Other classes may be developed so that the categories reflect uses appropriate for the valuation of agricultural land and horticultural land. *Id.* Nothing in section 77-1363 is to be construed to limit the classes or subclasses of real property that may be used to achieve more uniform and proportionate valuation. *Id.*

An appraiser employed by the State Assessment Manager ("County Appraiser") testified that Market Area 3 was established in Dakota County for the tax year 2007 based on "location." The term location may simply mean an area or tract of land. *Webster's Third New International Dictionary*, Merriam-Webster Inc, p. 1327 (1961). Application of that definition within the context of section 77-103.01 would mean that each parcel of land could constitute a class or subclass of real property. In the context of appraisal or valuation of real property, location may be defined as "the time-distance relationship, or linkages between a property or neighborhood and all other possible origins and destinations of people going or coming from the property or neighborhood." *The Appraisal of Real Estate*, 12<sup>th</sup> Edition, p. 46 (1961). The latter definition is

focused on factors other than the boundaries of a parcel. The valuation definition of location calls for consideration of factors associated with the place at which a parcel is found as they affect its value in a different manner than parcels at other places. A group of parcels having characteristics that affect actual value of those parcels in a manner different than other properties may constitute a class or subclass of real property. See, Neb. Rev. Stat. §77-103.01 (Reissue 2003). The question then is whether factors associated with location for any reason, articulated or unarticulated, would affect actual value of the parcels in Market Area 2 of Dakota County differently than the parcels in Market Area 3 of Dakota County?

The effect of location on actual value could be shown by the differential in prices paid for comparable parcels in different locations. As part of a preliminary analysis the County Appraiser determined that 21 sales of unimproved agricultural land and horticultural land should be evaluated to determine the actual value of agricultural land and horticultural land in what had been Market Area 2 for tax year 2006. (E22:90 through 93). The median assessment to sale ratio based on 2006 values of the sales in what had been market area 2 for the tax year 2006 was 58.35%. (E22:93). The required level of value is 75% of actual value. Neb. Rev. Stat. §77-201 (2) (Cum. Supp. 2006).

After that preliminary review the County Appraiser developed Market Area 3 from a part of the area that had been in Market Area 2. Market Area 1 was not affected. Twelve of the 21 sales that had been in Market Area 2 before its division were now parcels the County Appraiser assigned to Market Area 3. (E22:94).

An analysis of the legal descriptions of two parcels assigned to Market Area 3, one a transaction recorded in book 5 at page 4433 and a transaction recorded in book 6 at page 1189,

shows that those two parcels are located in Market Area 1 not Market Area 3. Removal of the sales does not however affect the level of value indicated by the median assessment to sale ratio of the remaining 10 sales.

After division of Market Area 2 into Market Area 2 and Market Area 3 the median assessment to sale ratio, based on 2006 values of the 9 parcels in the new Market Area 2 was 83.36%. (E22:101). The indication from those sales was that actual values of agricultural land and horticultural land should be lowered in Market Area 2 to reach the required 75% of actual value for assessment purposes.

The median assessment to sale ratio, based on 2006 values, of the 10 parcels, truly in the new Market Area 3, was 49.94%. (E22:101). The indication from those sales was that actual values of agricultural land and horticultural land should be increased in Market Area 3 to reach the required 75% of actual value for assessment purposes. One of the requirements for creation of Market Area 2 and 3, a difference in value, was shown by sales within specified boundaries. The reason for the indicated differences in value must be determined.

The Taxpayer produced evidence that the actual value of agricultural land and horticultural land within Dakota County was rising rapidly over the period from July 1, 2003, to June 30, 2006, the period from which sales were used to determine taxable value for the agricultural land and horticultural lands in Market Areas 2 & 3. The Taxpayer also showed that the sales used to determine taxable value for the lands in Market Area 2 occurred early in the period and that sales in Market Area 3 fell later in the period. The evidence is that the time frame in which the sales occurred explains the differences in taxable value determined for each

Market Area. The County Appraiser testified that time adjustments were not made to sales and that time of sale within the 3 years of sales considered should not be a factor in valuation.

The County Appraiser testified that the reason for the difference in valuation was location. It is true that the parcels analyzed were located within the boundaries of Market Area 2 and 3 as determined by the County Appraiser. The County Appraiser did not identify any factors associated with location that would have affected the value of parcels in Market Area 2 differently than the parcels in Market Area 3.

The evidence is that the parcels sold in Market Area 2 share many characteristics with the parcels sold in Market Area 3. Parcels in both market areas are mixed in size; the parcels are primarily composed classified as 4D1; and are composed of soils in the Crofton-Nora Napier association. All of the parcels are used for the commercial production of agricultural products. After plotting the sales on Exhibit 21 page 13 and a review of the soil survey for Dakota County the Commission is unable to find any geographic characteristic that distinguishes the parcels in Market Area 2 from those in Market Area 3. No testimony was received which indicates that the geographic characteristics of the parcels in Market Area 2 are different than the geographic characteristics of those in Market Area 3. Exhibit 21 clearly explains the rationale and the factors in support of the creation of market Area 1. Exhibit 21 does not describe a rationale or factors in support of the creation of Market Area 3.

The evidence in this proceeding is that the establishment of Market Areas 2 & 3 for the tax year 2007 in Dakota County was not based on the factors or criteria described in section 77-103.01 of Nebraska Statutes. The Commission finds that Market Area 3 was not lawfully

established. The Taxpayer is entitled to have taxable values of the parcels of the subject property valued for taxation on the same basis as parcels in Market Area 2.

Dakota County Area 2 2007 ag land values are shown in Exhibit 11 at page 61.

Application of those values to the land classification in each parcel subject to appeal in Case Nos 07A-099, 07A-100, 07A-101, 07A-102 and 07A-103 is shown in the following tables.

Case # 07A-099

Description: S $\frac{1}{2}$ SW $\frac{1}{4}$  except cemetery and except 10 acre tract in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  lying North and West of Co. Rd. and except Public Road Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

LVG	Acres	Taxable Value/Acre	Taxable Value
1D	21	1,100	23,100
2D1	13	980	12,740
3D1	2	910	1,820
4D1	24	865	20,760
Waste	3	135	405
4GT2	1.36	340	462
Road	4		
Total	68.36		59,287

Case # 07A-100

Description: N $\frac{1}{2}$ SW $\frac{1}{4}$  Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

LVG	Acres	Taxable Value/Acre	Taxable Value
1D	17.5	1,100	19,250
2D1	12	980	11,760
4D1	9	865	7,785
1G	4	980	3,920

LVG	Acres	Taxable Value/Acre	Taxable Value
2G1	7	930	6,510
3G1	2	855	1,710
4G1	9	855	7,695
4G	6	855	5,130
Waste	13	135	1,755
Road	.5		
Total	80		65,515

Case # 07A-101

Description: NW¼NE¼ Section 11, Township 28 North, Range 6 East, Dakota County, Nebraska.

LVG	Acres	Taxable Value/Acre	Taxable Value
1D	10	1,100	11,000
2D1	5	980	4,900
1G	2	980	1,960
2G1	3	930	2,790
4G1	11	855	9,405
4G	8	855	6,840
Waste	1	135	135
Total	40		37,030

Case # 07A-102

Description: SE¼SE¼ & part of N½ SE¼, lying South of Ctr line of Minnow Creek, Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

LVG	Acres	Taxable Value/Acre	Taxable Value
1D	21	1,100	23,100
2D1	15	980	14,700

LVG	Acres	Taxable Value/Acre	Taxable Value
3D1	6	910	5,460
4D1	5	865	4,325
4D	8.5	865	7,353
Waste	4.5	135	607
Total	60		55,545

Case # 07A-103

Description: SW¼SE¼ Section 2, Township 28 North, Range 6 East, Dakota County, Nebraska.

LVG	Acres	Taxable Value/Acre	Taxable Value
1D	6	1,100	6,600
2D1	21	980	20,580
2G1	3	930	2,790
4G1	1	855	855
4G	3	855	2565
Waste	6	135	810
Total	40		34,200

An appeal is moot when the issues presented cease to exist. *Orchard Hill Neighborhood v. Orchard Hill Mercantile*, 274 Neb. 154, 738 N.W.2d 820 (2007). The relief granted in Case Nos. 07A-099, 07A-100, 07A-101, 07A-102 and 07A-103, a determination of taxable value, is the relief sought in Case Nos. 07A-139, 07A-140, 07A-141, 07A-142, and 07A-143. Because taxable value for the year 2007 has been determined for all of the parcels described in Case Nos. 07A-139, 07A-140, 07A-141, 07A-142, and 07A-143 those appeals should be dismissed.

**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 decisions of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

**VI.  
ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board determining taxable values of the parcels comprising subject property as of the assessment date, January 1, 2007, are reversed and vacated in Case Nos. 07A-099, 07A-100, 07A-101, 07A-102, and 07A-103.
2. Taxable value, for the tax year 2007, of each parcel described in an appeal as referenced by the Case No. is:

Case No. 07A-099

Agricultural land     \$ 59,287.00

Total                     \$ 59,287.00

Case No. 07A-100

Agricultural land \$ 65,515.00

Total \$ 65,515.00

Case No. 07A-101

Agricultural land \$ 37,030.00

Total \$ 37,030.00

Case No. 07A-102

Agricultural land \$ 55,545.00

Total \$ 55,545.00

Case No. 07A-103

Agricultural land \$ 34,200.00

Total \$ 34,200.00

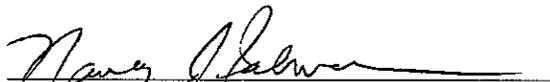
3. The appeals in Case Nos. 07A-139, 07A-140, 07A-141, 07A-142 and 07A-143 are dismissed
4. This decision, if no appeal is timely filed, shall be certified to the Dakota County Treasurer, and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2007.

8. This order is effective for purposes of appeal on November 3, 2008.

Signed and Sealed. November 3, 2008.



SEAL

  
Nancy J. Salmon, Commissioner

  
William C. Warnes, Commissioner

**APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (CUM. SUPP. 2006), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.**

I concur in the result.

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 (Supp. 2007). 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) (Supp. 2007).

Nebraska courts have held that the provisions of section 77-5016(8) of the Nebraska Statutes create a presumption that the County Board has faithfully performed its official duties and has acted upon sufficient competent evidence to justify its actions. *City of York v. York County Board of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003). The presumption cited

in *York* has roots in the early jurisprudence of Nebraska. 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)). 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.*

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). Review of district court decisions made pursuant to section 77-1511 was de novo. *Future Motels, Inc. v. Custer County Board of Equalization*, 252 Neb. 565, 563 N.W.2d 785 (1997). The presumption functioned as a standard of review. See, e.g. *Gamboni v. County of Otoe*, 159 Neb. 417, 67 N.W.2d 492 (1954).

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 requires a finding that the decision being reviewed was unreasonable or arbitrary. The basis for that determination is the evidence presented to the Commission in a new record. See, Neb. Rev. Stat. §77-5016 (Cum.

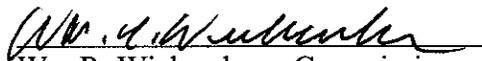
Supp. 2006). Commission decisions are reviewed for error on the record. See, Neb. Rev. Stat. 77-5019(5) (Cum. Supp. 2006). The statutory basis for Commission review and the review of its decisions is analogous to district courts review of decisions made by administrative agencies. The basis for district court review of decisions made by administrative agencies is de novo on the record. *Tyson Fresh Meats v. State*, 270 Neb. 535, 704 N.W.2d 788 (2005). The decisions of the district court examining the administrative decision are reviewed for error on the record. *Thorson v. Nebraska Dept. of Health & Human Servs.*, 274 Neb. 322, 740 N.W.2d 27 (2007). The similarities are enough to suggest that the framework for review applied to district court decisions could be made applicable to decisions of the Commission.

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. 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). As noted however review was de novo and the reviewing court was not bound by the standard of review imposed on district court. *Loskill v. Board of Equalization of Adams County*, 186 Neb. 707, 185 N.W.2d 852 (1971). 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 the district courts; one statutory, and the other judicial stated as a presumption that the county board of equalization faithfully performed its official duties and acted upon sufficient competent evidence. No attempt was made by the *Hastings* Court to reconcile the two standards of review that were applicable to the district courts.

The possible results from application of the presumption and the statutory standard of review by the Commission 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. If the presumption is overcome the statutory standard remains. See, *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The second possibility does not therefore allow a grant of relief even though the presumption is overcome. The third possibility requires analysis. The presumption and the statutory standard of review are different legal standards, one remaining after the other has been met. See. *City of York v. York County Bd of Equal.*, 266 Neb. 297, 664 N.W.2d 445 (2003). The burden of proof to overcome the presumption is competent evidence. *City of York*, Supra. 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*, Supra. 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. Each analyses of the standards of review allowing a grant of relief requires a finding that the statutory standard has been met.

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 possible conflict or difficulties inherent in the application of two standards of review. The *Gordman* analysis requires the Commission to consider all of the evidence produced in order to determine whether there is clear and convincing evidence that the decision, action, order, or determination being reviewed was unreasonable or arbitrary. It is within that framework that I have analyzed the evidence.

  
Wm R. Wickersham, Commissioner