

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

Kaapa Ethanol, LLC,  
Appellant,

v.

Kearney County Board of Equalization,  
Appellee,

Case Nos.: 09C-083, 09C-084, 10C-011,  
10C-012, 11C-005, 11C-006

Order Reversing the Decisions of the  
Kearney County  
Board of Equalization

**For the Appellant:**

Daniel L. Lindstrom,  
Jacobsen, Orr, Nelson, Lindstrom &  
Holbrook, P.C. L.L.O

William E. Peters,  
Peters and Chunka

**For the Appellee:**

Bryan S. McQuay,  
Kearney County Attorney

Appeals were heard before Commissioners Robert W. Hotz, Nancy J. Salmon, and Thomas D. Freimuth.

**I. THE SUBJECT PROPERTY**

The Subject Property is comprised of two commercial parcels located in Kearney County, Nebraska. One parcel (Lots 1-4) consists of 138.52 acres, and is improved with an ethanol production facility. The second parcel (Lot 5) is unimproved, with a size of 4.59 acres. The legal descriptions of the parcels are found at Exhibit 1 page 1 and Exhibit 3 page 1.

**II. PROCEDURAL HISTORY**

The Kearney County Assessor (Assessor) determined that the assessed value of the Subject Property was \$21,474,680 (Case No. 09C-083, 10C-011, 11C-005) for Lots 1-4, and \$34,595 (Case No. 09C-084, 10C-012, 11C-006) for Lot 5 for tax years 2009, 2010, and 2011 respectively.<sup>1</sup> Kaapa Ethanol, LLC (Kaapa) protested these assessments to the Kearney County Board of Equalization (County Board) and requested an assessed valuation of \$20,807,035 (Case No. 09C-083, 10C-011, and 11C-005) for Lots 1-4 and \$10,993 (Case No. 09C-084, 10C-012,

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<sup>1</sup> E1:1, E3:1, and E5:1.

and 11C-006) for Lot 5 for tax years 2009, 2010, and 2011, respectively.<sup>2</sup> The County Board determined that the assessed value was \$21,474,680 (Case No. 09C-083, 10C-011, 11C-005) for Lots 1-4 and \$34,595 (Case No. 09C-084, 10C-012, 11C-006) for Lot 5 for tax years 2009, 2010, and 2011.<sup>3</sup> Kaapa appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged and stipulated to the receipt of exhibits, and further stipulated that valuation of each of the Subject Properties would be the same for tax years 2009, 2010 and 2011. The Commission held a hearing on October 17, 2011.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is *de novo*.<sup>4</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>5</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>6</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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<sup>2</sup> E1:2, E3:2.

<sup>3</sup> E1:1, E3:1, and E5:1.

<sup>4</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>9</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>10</sup>

In an appeal, the Commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>11</sup> The Commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>12</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

"Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."<sup>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning

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<sup>9</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

<sup>10</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>15</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

as assessed value.<sup>16</sup> All real property in [Nebraska] subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

Real property shall mean: (1) All land; (2) All buildings, improvements, and fixtures, except trade fixtures;...<sup>19</sup> “The term tangible personal property [includes] trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased, ...<sup>20</sup> Section 77-105 “clearly controls the issue of classification of fixtures for taxation purposes.”<sup>21</sup>

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

### **1. Office Building**

Kaapa asserted that the office building<sup>22</sup> on the Subject Property was over-assessed. The Assessor valued the office building at \$489,424 using the cost approach.<sup>23</sup> This included a quality rank of 4.0 (good) and 6% physical depreciation.<sup>24</sup>

Kaapa offered the testimony of Shana Dahlgren. Dahlgren was the Controller and Chief Financial Officer for Kaapa since 2003. Robin Hendricksen also testified on behalf of Kaapa. Hendricksen was a Certified General Commercial Appraiser. Kaapa also offered a cost approach worksheet.<sup>25</sup> Kaapa’s cost approach worksheet differed from the Assessor’s cost approach in two respects: Kaapa’s quality rank was 2.0 (as compared to 4.0), and Kaapa’s physical depreciation was 11.35% (as compared to 6%). As a result, Kaapa’s cost approach worksheet indicated a value of \$312,412, as compared to the County Board determination of value of \$489,424.

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<sup>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>17</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-103 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-105 (2011 Supp.). This section of statute was modified by the Legislature in the 2010 and 2011 Sessions, but those changes did not impact the statutory language relevant to the analysis of the current appeals.

<sup>21</sup> *Vandenberg v. Butler County Board of Equalization*, 796 N.W.2d 580, 584, 281 Neb. 437, 442 (2011).

<sup>22</sup> Various photographs of the office building are found in the record at Exhibit 8, pages 12 and 14, Exhibit 10, pages 9-12, and Exhibit 29, page 1, as identified by Dahlgren during her testimony.

<sup>23</sup> E 8:4.

<sup>24</sup> E 8:4.

<sup>25</sup> E 3:6.

Shana Dahlgren testified that the office building had numerous physical characteristics that she believed warranted a lower quality rank than 4.0. She asserted that the quality rank for the office building should be category 2, low-cost construction. However, Dahlgren admitted she had no construction expertise, no experience with the Marshall Valuation Service manuals, and that she was not a certified or registered appraiser.

Robin Hendricksen testified that he had inspected the office building and opined that the value of \$520,663<sup>26</sup> was “blatantly high.” He also asserted<sup>26</sup> that the quality rank of 4.0 was too high, and that the amount assessed for basement heating and cooling was too high. Hendricksen did not prepare an appraisal report. He testified that Kaapa’s cost worksheet<sup>27</sup> was prepared by John Layman.<sup>28</sup>

The testimony regarding the quality rating and the depreciation deduction can best be characterized as differences of opinion.<sup>29</sup> The Commission finds that Kaapa’s evidence regarding the valuation of the office building is not clear and convincing evidence that the County Board’s determination of value was arbitrary or unreasonable.

## 2. Trade fixtures

The Assessor used the cost approach to value the improvements on Lots 1-4. Among the improvements valued as real property were two bucket elevators.<sup>30</sup> The cost approach worksheet indicates the Assessor valued the bucket elevators as real property, in the amount of \$148,000 with no depreciation deduction.<sup>31</sup> The County Board relied upon the recommendation made by the Assessor.<sup>32</sup>

We will apply statutory definitions in order to determine whether the bucket elevators were appropriately classified as real property. Real property shall mean: (1) All land; (2) All buildings, improvements, and fixtures, except trade fixtures;...<sup>33</sup> Tangible personal property includes trade fixtures, which means “machinery and equipment, regardless of the degree of

<sup>26</sup> See E 8:4.

<sup>27</sup> Kaapa’s cost worksheet is found at Exhibit 3 page 6.

<sup>28</sup> John Layman later testified he was a certified commercial appraiser since 1992.

<sup>29</sup> “[T]he burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

<sup>30</sup> E8:6.

<sup>31</sup> E8:6.

<sup>32</sup> E1:1, E3:1, and E5:1.

<sup>33</sup> Neb. Rev. Stat. §77-103 (Reissue 2009).

attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property...<sup>34</sup> Therefore, to determine whether the bucket elevators should be classified as trade fixtures, and not as real property, an analysis of the elements of § 77-105 is necessary. In order to be classified as a trade fixture under § 77-105, the bucket elevators must be (1) either machinery or equipment, and (2) must be used directly in commercial, manufacturing, or processing activities conducted on real property.

We first consider whether the bucket elevators are machinery. Machine means “[a]n assemblage of parts that are usu. solid bodies but include in some cases fluid bodies or electricity in conductors and that transmit forces, motion, and energy on to another in some predetermined manner and to some desired end.”<sup>35</sup> It is evident from the record that the bucket elevators were machines, which transported grain from one location of the ethanol facility to another. The Commission finds that the bucket elevators are machinery as defined in the statute.

Next, we must consider whether under § 77-105 the bucket elevators were used directly in a commercial activity conducted on real property. Again, the evidence in the record shows that the bucket elevators were an integral component of the commercial operations of the ethanol facility. The Commission finds that such use of the bucket elevators were for commercial production.

There is sufficient evidence in the record for the Commission to find that the bucket elevators used in conjunction with the Subject Property ethanol facility are machines used directly in commercial activities conducted on the real property.<sup>36</sup> It follows that the bucket elevators were trade fixtures, not real property, and should not have been included with the real property that was valued using the cost approach. Thus, there is clear and convincing evidence that the County Board’s determination to assess the bucket elevators as real property was unreasonable. The Commission finds that the taxable value of the improvements of Lots 1-4 of the Subject Property should be reduced by \$148,000.<sup>37</sup> Therefore, the taxable value of the improvements on Lots 1-4 are as follows:

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<sup>34</sup> Neb. Rev. Stat. §77-105 (2011 Supp.).

<sup>35</sup> Webster’s Third New International Dictionary, Merriam-Webster, Inc., (2002) p. 1353.

<sup>36</sup> The Commission takes notice of “general, technical, or scientific facts within its specialized knowledge...” The Commission is also using “its experience, technical competence, and specialized knowledge” in the evaluation of this evidence. See Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>37</sup> E8:6.

Office Building (plus Miscellaneous)	\$ 3,280,654 <sup>38</sup>
Manufacturing Building (plus Miscellaneous)	\$ 3,959,992 <sup>39</sup>
Manufacturing Building	\$ 5,439,842 <sup>40</sup>
Manufacturing Building	\$ 1,961,413 <sup>41</sup>
Manufacturing Building	\$ 272,205 <sup>42</sup>
Manufacturing Building (plus Miscellaneous)	\$ 5,322,741 <sup>43</sup>
<u>Equipment Shed</u>	<u>\$ 11,798<sup>44</sup></u>
Total	\$20,248,645

## V. EQUALIZATION

### A. Law

“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.”<sup>45</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>46</sup> 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.<sup>47</sup> Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>51</sup> In the evaluation of real property for tax purposes, where

<sup>38</sup> E8:4-5.

<sup>39</sup> E8:6 (minus \$148,000 for bucket elevators).

<sup>40</sup> E8:7.

<sup>41</sup> E8:8.

<sup>42</sup> E8:9.

<sup>43</sup> E8:10.

<sup>44</sup> E8:11.

<sup>45</sup> *Neb. Const.*, Art. VIII, §1.

<sup>46</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>47</sup> *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).

<sup>48</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>49</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>50</sup> *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).

<sup>51</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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.<sup>52</sup> 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 judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>53</sup>

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

### **1. Office Building**

Both Dahlgren and Hendricksen made reference to a property asserted to be a comparable.<sup>54</sup> Both had observed or inspected the interior of the alleged comparable as late as 2008. Dahlgren testified the comparable was also an office building used for purposes of grain receiving and accounting, and that it had a similar internal layout as compared to the Subject Property office building. However, Kaapa did not make any adjustments to account for the differences between the alleged comparable office building and the Subject Property office building nor did it quantify any of these differences.

### **2. Land**

The County Board determined the value of Lots 1-4<sup>55</sup> at \$1,033,620 and Lot 5<sup>56</sup> at \$34,595 for each of the three tax years at issue.<sup>57</sup> These determinations were consistent with the Assessor's recommendations at the time of the protest proceeding.<sup>58</sup> The Assessor valued Lots 1-4 as indicated on Exhibit 8, page 3, and Lot 5 as shown on Exhibit 8, page 15. It appears that

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<sup>52</sup> *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).

<sup>53</sup> *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

<sup>54</sup> Exhibit 9.

<sup>55</sup> Exhibit 8:1 is an aerial photograph of Lots 1-4.

<sup>56</sup> Exhibit 8:2 is an aerial photograph of Lot 5.

<sup>57</sup> Exhibits 1:1, 3:1, and 5:1.

<sup>58</sup> *Id.*

Lots 1-4 were assessed using a per-acre method<sup>59</sup> and Lot 5 was valued using a per square foot method.<sup>60</sup>

Kaapa asserted that the contribution to value of the land component of the Subject Properties was not equalized with comparable parcels in Kearney County. Kaapa offered an Equalization Report of Land Assessment (Report), prepared by John Layman.<sup>61</sup> The Report includes a review of the land assessments for both Subject Properties, as of January 1, 2009, January 1, 2010, and January 1, 2011.<sup>62</sup> The Report identified the Subject Properties as being located approximately eight miles West of Minden, Nebraska, zoned agricultural,<sup>63</sup> and annexed to the city of Minden<sup>64</sup> in order to receive tax increment financing under the Nebraska Redevelopment Act.<sup>65</sup>

Layman was called to testify on behalf of Kaapa. He testified that he had inspected the Subject Properties at least five times between 2005 and 2011. Layman described the Subject Properties as having fire protection service provided by the city of Minden, but otherwise all services at the Subject Property were self-contained.<sup>66</sup>

Layman's review of comparable properties in Kearney County involved establishing criteria of comparison. He selected "lots that provide similar utility," including topography and accessibility to major highways and railroads.<sup>67</sup> In his Report, Layman compared the assessments of these comparable properties to the assessments of the Subject Properties, and indicated equalized values for the subject properties in the amounts of \$517,610 (Lots 1-4) and \$10,993 (Lot 5).

Both in his Report and in his testimony, Layman described five parcels which he asserted were comparable to the Subject Properties using his criteria of comparison. He testified that the three most comparable properties were improved with grain-handling facilities, which he asserted were similar in use to the improvements on the Subject Property.<sup>68</sup> He also included in his criteria of comparison the fact that these five parcels each had adjoining access to Burlington

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<sup>59</sup> Lots 1-4 consisted of a total of 138.52 acres, valued at \$1,033,620 ( $\$1,033,620 / 138.52 \text{ acres} = \$7,462 \text{ per acre}$ ). See E8:3.

<sup>60</sup> The first 140,000 square feet of Lot 5 were valued at \$0.23 per square foot ( $140,000 \times \$0.23 = \$32,200$ ). The next 59,940 acres of Lot 5 were valued at \$.04 per square foot ( $59,940 \times \$.04 = \$2,395$ ).  $\$32,200 + \$2,395 = \$34,595$ . See E8:15.

<sup>61</sup> E7. Layman is a certified commercial appraiser, licensed since 1992. His qualifications are listed at Exhibit 7 pages 29-30.

<sup>62</sup> E7:2. Layman's Report does not include any review of the improvements, the Ethanol production facility, nor does it include a market value opinion of the land.

<sup>63</sup> E7:13.

<sup>64</sup> E7:14

<sup>65</sup> Neb. Rev. Stat. §58-501 et seq.

<sup>66</sup> Kaapa provided its own electric, gas, water, sewer, waste, and road maintenance services.

<sup>67</sup> E7:20.

<sup>68</sup> E9, E10, and E11.

Northern Santa Fe railroad lines, had direct access to Highway 6 and Highway 34, and had flat topography; all features similar to the Subject Properties.

The Assessor valued the land for each of these parcels at \$660, \$2,395, or \$5,880 per acre.<sup>69</sup> Layman expressed his opinion that, regarding the land component of each of the grain handling facilities, the Assessor valued each acre based upon whether the activities in relation to the grain handling facilities were on the parcel or whether the land was excess land in relation to the grain handling facilities. His Report and testimony indicated that the land improved with grain handling facilities or otherwise used for grain handling activity was valued at \$5,880, while the excess land was valued at \$2,395.

It was Layman's opinion that the Subject Property should have values equalized with these comparables based upon the comparability of the properties as determined by his criteria of comparison. We agree.

Regarding Subject Property Lots 1-4, Layman expressed his opinion that 53.33 acres should be categorized as "activity," and 85.19 acres as "excess." Regarding Lot 5, Layman's opinion was that all 4.59 acres should be categorized as excess. Layman concluded in his Report that the equalized value of the land for Lots 1-4 should be \$517,610.<sup>70</sup> Layman likewise concluded that the equalized value for Lot 5 should be \$10,993.<sup>71</sup>

We find that the comparables asserted in the Report are sufficiently comparable to the Subject Properties to warrant equalized relief. 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.<sup>72</sup> We also find that there is clear and convincing evidence that the County Board's determinations of value of the land components of the Subject Properties as compared to the valuations of the comparables in the Report are grossly excessive.<sup>73</sup>

## VI. CONCLUSION

The Commission finds that Kaapa has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to

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<sup>69</sup> E9:5, E9:7, E9:16, E10:3, E11:3, and E11:5.

<sup>70</sup> E7:24,  $(53.33 \times \$5,880) + (85.19 \times 2,395) = \$313,580 + \$204,031 = \$517,610$ .

<sup>71</sup> E7:24,  $4.59 \times \$2,395 = \$10,993$ .

<sup>72</sup> *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).

<sup>73</sup> *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

make its determination and that Kaapa has provided clear and convincing evidence that the County Board's determination of value was arbitrary or unreasonable. The Commission also finds that there is clear and convincing evidence that the County Board's determinations of value of the land components of the Subject Properties as compared to the valuations of the comparables in the Report are grossly excessive.

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

## VII. ORDER

### IT IS ORDERED THAT:

1. The Decision of the Kearney County Board of Equalization determining the value of the Subject Property for tax years 2009, 2010, and 2011 is vacated and reversed.<sup>74</sup>
2. The Assessed value of the Subject Property for each of the tax years 2009, 2010, and 2011 is:

Case No. 09C-083, 10C-011, 11C-005

Land	\$ 517,610
Improvements	<u>\$20,248,645</u>
Total	\$20,766,255

09C-084, 10C-012, 11C-006

Land	\$ 10,993
Improvements	\$ <u>0</u>
Total	\$ 10,993

3. This decision and order, if no appeal is timely filed, shall be certified to the Kearney County Treasurer and the Kearney County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 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.

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<sup>74</sup> Assessed value, as determined by the county board of equalization, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the county board of equalization at the protest proceeding.

6. This decision shall only be applicable to tax years 2009, 2010, and 2011.
7. This order is effective for purposes of appeal on November 28, 2012.

Signed and Sealed: November 28, 2012.

SEAL

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.) and other provisions of Nebraska Statutes and Court Rules.

**Commissioner Freimuth, concurring in the result.**

I concur only in the result that the value of the Subject Property for each of the tax years 2009, 2010, and 2011 is:

Case No. 09C-083, 10C-011, 11C-005

Land	\$ 517,610
Improvements	<u>\$20,248,645</u>
Total	\$20,766,255

09C-084, 10C-012, 11C-006

Land	\$ 10,993
Improvements	\$ <u>0</u>
Total	\$ 10,993

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Thomas D. Freimuth, Commissioner