

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

William C. Cronican,  
Appellant,

v.

Otoe County Board of Equalization,  
Appellee.

Case Nos: 13A 018 & 14A 031

Decision and Order Affirming the  
Determinations of the Otoe County  
Board of Equalization

**For the Appellant:**

Chris Pfanstiel,  
Lewis Pfanstiel & Reed, LLC.

**For the Appellee:**

David J. Partsch,  
Otoe County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of two contiguous parcels located in Otoe County, Nebraska. The legal description of the 11.3 acre parcel in Case No. 13A 018 is found at Exhibit 1, page 1. The legal description of the 7.88 acre parcel in Case No. 14A 031 is found at Exhibit 2, page 3. The property record cards for the Subject Property are found at Exhibits 3 and 4.

**II. PROCEDURAL HISTORY**

In Case No. 13A 018, the Otoe County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$32,860 for tax year 2013. William C. Cronican (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$11,760. The County Board determined that the taxable value of the Subject Property for tax year 2013 was \$37,290.<sup>1</sup>

In Case No. 14A 031, the County Assessor determined that the assessed value of the Subject Property was \$26,790 for tax year 2014. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$780. The County Board determined that the taxable value of the Subject Property for tax year 2014 was \$26,790.<sup>2</sup>

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<sup>1</sup> E1:1.

<sup>2</sup> E2:1.

The Taxpayer appealed these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). In Case No. 13A 018, the appeal was designated for a single commissioner hearing and a single commissioner hearing was held on June 12, 2014. An order by a single commissioner was issued on June 20, 2014. The Taxpayer filed a timely request for a rehearing, which was received by the Commission on July 10, 2014. The Commission issued an Order for Rehearing and Notice of Rehearing vacating the June 20, 2014, single commissioner order for Case No. 13A 018 and setting the appeal for a de novo hearing on the merits before the Commission. In the same order, the Commission also issued an order for hearing for Case No. 14A 031, consolidating the two appeals.

Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. The Commission held the consolidated hearing on February 10, 2015.

### **III. STANDARD OF REVIEW**

The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</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>4</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>5</sup>

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<sup>3</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>8</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>9</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>10</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>11</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

## IV. VALUATION

### A. Applicable 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>

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<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</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>9</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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

“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> The Courts have held that “[a]ctual 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 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>

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>19</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>20</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.<sup>21</sup>

Under Nebraska law, wasteland includes,

land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes....<sup>22</sup>

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<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).

<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. §77-1359 (1) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-132 (Reissue 2009).

<sup>21</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>22</sup> Title 350, Chapt. 14, §002.54. Rev. 3/15/09.

Recreational shall mean, “all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”<sup>23</sup> Predominant use shall mean, “the most common, frequent, or prevailing use of the land.”<sup>24</sup>

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

The 11.3 acre parcel in Case #13A 018 was purchased by the Taxpayer for \$35,000 on January 10, 2003.<sup>25</sup> The 7.88 acre parcel in Case #14A 031 was also purchased by the Taxpayer on January 10, 2003 for \$24,000.<sup>26</sup> The Taxpayer testified a third parcel was also purchased on January, 2010, for the purpose of building a residence, but as of the effective dates of January 1, 2013, and January 1, 2014, no improvements had been constructed on any of the three parcels.

William Cronican testified that prior to his purchase of the Subject Property it had been owned and farmed in conjunction with adjacent parcels, and that after his purchase and through 2011 the Subject Property had been farmed under a share crop agreement with the previous owner. However, after flooding in 2011, the previous owner elected not to renew the contract. Cronican testified that the flooding resulted in alluvial deposits on the Subject Property that inhibited the growth of crops. Cronican testified that in 2012 he planted about 3 acres of alfalfa on the Subject Property and later harvested the alfalfa in the spring of 2014, but that he received no income from the agricultural or horticultural activities in either 2013 or 2014. He testified that a majority of the 3 acres of alfalfa lay on the 11.3 acre parcel found in Case No. 13A 018.<sup>27</sup> He asserted that in 2014 he undertook rehabilitation work and removed 30 inches of alluvial deposit to allow for further use of the Subject Property for agricultural or horticultural purposes.<sup>28</sup> He testified that the rehabilitated acres would be used for agricultural or horticultural purposes in the future, including growing soybeans and corn.

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<sup>23</sup> Title 350, Chapt. 10, §001.05E. Rev. 3/15/09.

<sup>24</sup> Title 350, Chapt. 10, §001.05E. Rev. 3/15/09.

<sup>25</sup> See, E3:8.

<sup>26</sup> See, E4:13.

<sup>27</sup> See, E6:1-3.

<sup>28</sup> See, E6:4-8.

Cronican described the 7.88 acre parcel found in Case No. 14A 031 as consisting of mostly bluffs and trees and unsuitable for agricultural or horticultural purposes.

Cronican asserted that because the Subject Property was adjacent to agricultural land and horticultural land, and had been farmed in conjunction with the adjacent land until the 2011 flooding rendered the Subject Property unsuitable for agricultural or horticultural purposes, that the Subject Property should be classified as agricultural land and horticultural land, with a majority assessed as Wasteland and the remainder assessed at its actual use for growing alfalfa. The Taxpayer argues that the County Assessor and County Board were in error when they categorized the Subject Property as recreational land. Cronican asserted that he had never obtained income for recreational use of the Subject Property.

Cronican testified that he hunts deer on the Subject Property during the archery and muzzle loader seasons, which range from September through January. He testified that he has also allowed family members to hunt the Subject Property both with him and alone. He concurred that the alfalfa would attract deer. Additionally, Cronican testified that he visits the Subject Property almost every weekend to walk around, cut firewood, maintain the property, and hunt.

Therese Gruber, Otoe County Assessor, testified that she determined whether real property in Otoe County qualifies as agricultural land and horticultural land based upon an inspection of the property that determined uses of the real property, and whether any uses for agricultural or horticultural purposes are for commercial production or individual use. She asserted that the Subject Property was inspected in December 2012, and that she had not seen any alfalfa or other crops located on the Subject Property. However, she asserted that assuming the 3 acres of alfalfa were planted she still would conclude that the Subject Property is not agricultural land and horticultural land. She testified that there are multiple parcels of real property in Otoe County where the owner plants crops or vegetation for the purpose of attracting wildlife or for recreational purposes. She testified that she assesses portions of recreational parcels used for agricultural or horticultural purposes at 75% of actual value.

### C. Analysis

The Commission first notes that there are two separate parcels that constitute the Subject Property for the purposes of these appeals. The Commission also notes that the assessed value for the 11.3 acre parcel found in Case No. 13A 018 was only appealed for tax year 2013, and the assessed value of the 7.88 parcel found in Case No. 14A 031 was only appealed for tax year 2014. This decision is limited to tax year 2013 for the 11.3 acre parcel found in Case No. 13A 018 and to tax year 2014 for the 7.88 parcel found in Case No. 14A 031.

The Taxpayer has put at issue whether the Subject Property should be assessed as Wasteland, a subclass of agricultural land and horticultural land, instead of as recreational land.

The term “agricultural land and horticultural land” is a term of art defined by Nebraska statutes.

Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, 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;...<sup>29</sup>

Agricultural and horticultural purposes are also defined by Nebraska law: “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.”<sup>30</sup>

In *Agena v. Lancaster County Board of Equalization*, the Nebraska Supreme Court held that when determining how a parcel of agricultural land and horticultural land is primarily used, an assessment official must assess the parcel based upon the primary use of the entire parcel and not independently assess the uses of the various portions of the parcel.<sup>31</sup> The *Agena* decision was followed by legislation in 2008 and 2012, both amending the definition of “agricultural land and horticultural land” in Section 77-1359.<sup>32</sup> The 2008 legislation excluded “any building or enclosed structure and the land associated with such building or enclosed structure located on the

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<sup>29</sup> Neb. Rev. Stat. §77-1359 (1) (2014 Cum. Supp.).

<sup>30</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

<sup>31</sup> *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 862-863, 758 N.W.2d 363, 373 (2008).

<sup>32</sup> See 2008 Neb. Laws, LB777, § 1, and 2012 Neb. Laws, LB750, §1.

parcel” from the “primarily used” analysis.<sup>33</sup> However, the 2012 legislation revised what is excluded from the “primarily used” analysis so that only the “land associated with a building or enclosed structure located on the parcel” is excluded.<sup>34</sup>

Applicable Rules and Regulations define the term “primarily used” as “the use of the land is mainly agricultural or horticultural.”<sup>35</sup> The term “mainly” is not defined in Nebraska law. However, “mainly” is defined elsewhere in relevant part as, “in the principal respect: for the most part: chiefly.”<sup>36</sup> Regarding the “primarily used” analysis for a parcel, Nebraska law does not make any one factor determinative. Therefore, the determination of whether a parcel is primarily used for agricultural or horticultural purposes must be based on the totality of the evidence, including any relevant factors.

The term Wasteland is also a term of art defined by Nebraska Statute:

Wasteland includes land that cannot be used economically and are [sic] not suitable for agricultural or horticultural purposes. Such land types include but are not limited to, blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas, and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for agricultural or horticultural purposes. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland.<sup>37</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>38</sup>

The Subject Property was not in common ownership or management with land used for agricultural or horticultural purposes for the tax years at issue in these appeals. The classification of the Subject Property is therefore limited to an examination of the Subject Property itself. While Gruber did not see any alfalfa planted on the Subject Property during her inspection in December 2012, the Commission finds that the photographs taken in 2014 and Cronican’s testimony are sufficient to establish the presence of approximately 3 acres of alfalfa,

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<sup>33</sup> See 2008 Neb. Laws, LB777, § 1, amending Neb. Rev. Stat. §77-1359(1) (Reissue 2009).

<sup>34</sup> See 2012 Neb. Laws, LB750, § 1, amending Neb. Rev. Stat. §77-1359(1) (2014 Cum. Supp.).

<sup>35</sup> Title 350 Neb. Admin. Code, ch 14 §002.56 (03/15/2009).

<sup>36</sup> *Webster’s Third New International Dictionary*, Merriam-Webster, Inc. (2002), p. 1362.

<sup>37</sup> Title 350, Neb. Admin. Code, ch. 14, §002.54. Rev. 3/15/09.

<sup>38</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

with a majority of acres located on the 11.3 acres parcel found in Case No. 13A 013, at all relevant times. The Commission notes that the approximately 3 acres of alfalfa constitute a small percentage of the total area of the Subject Property.

The evidence also indicates that the Subject Property in its entirety is frequently used for recreational purposes including hunting. The Commission also finds it significant that a majority of the acres of the Subject Property are not used for agricultural or horticultural purposes, and that no income was derived from the Subject Property from the small portion of the Subject Property that was used for agricultural and horticultural purposes during the relevant time periods. Additionally, the portions of the Subject Property used for agricultural or horticultural purposes also support the recreational uses of the Subject Property.

The parcel type Recreational means, “all parcels of real property predominately used or intended to be used for diversion, entertainment, and relaxation on an occasional basis. Some of the uses would include fishing, hunting, camping, boating, hiking, picnicking, and the access or view that simply allows relaxation, diversion and entertainment.”<sup>39</sup> This definition aptly describes the current use of the Subject Property including the use of the Subject Property for hunting. No portion of the Subject Property was used for commercial or residential purposes during the relevant time frame. Further, other than a few acres of the Subject Property used for non-income producing agricultural or horticultural purposes, the only other uses of the Subject Property during the relevant time period are accurately described as recreational.

The Commission finds that the totality of the evidence indicates that the uses of portions of the Subject Property for agricultural or horticultural purposes are incidental to the recreational uses of the Subject Property.

The Commission finds that there is not clear and convincing evidence that the County Board’s determination that the Subject Property constitutes recreational land was arbitrary or unreasonable.

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<sup>39</sup> Title 350, Neb. Admin. Code, ch. 10, §001.05E. Rev. 3/15/09.

## V. EQUALIZATION

### A. Applicable 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>40</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>41</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>42</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>43</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>44</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>45</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>46</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 [sic].”<sup>47</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>48</sup>

### B. Summary of the Evidence

Gruber testified that she valued portions of recreational parcels used for agricultural or horticultural purposes at 75% of actual value for the agricultural or horticultural purposes. All

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<sup>40</sup> *Neb. Const.*, Art. VIII, §1.

<sup>41</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>42</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>43</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>44</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>45</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>46</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>47</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>48</sup> *Id.* at 673, 94 N.W.2d at 50.

taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>49</sup> The Commission has found no authority in common law, statute, or rules and regulations that permit the assessment of a portion of a recreational parcel at less than actual value.

The evidence indicates that 3 acres of the Subject Property were planted in alfalfa at all relevant times. However, the property record files for the Subject Property indicate that the entire Subject Property was valued at 100% of its actual value as recreational.<sup>50</sup> While the County Assessor's practice of assessing portions of recreational parcels at less than actual value is not consistent with Nebraska law, a failure to extend the same privilege to the Subject Property would result in the Subject Property being assessed at a greater level of actual value than similar properties. 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>51</sup> The Commission finds that the portion of the Subject Property used for agricultural or horticultural purposes should be valued at 75% of its actual value for those purposes similar to other recreational parcels in Otoe County.

The Commission finds that although the Subject Property should receive some equalization relief the Taxpayer has failed to provide sufficient evidence to quantify the appropriate amount of relief. Cronican was unable to testify to the specific number of acres planted in alfalfa and did not provide the actual location of the planted acres; i.e., how many acres of alfalfa were located on which parcel. Further, no one presented evidence of the actual value of the approximately 3 acres of alfalfa for its agricultural or horticultural purposes. For these reasons the Commission affirms the determination of the County Board.

## VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that

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<sup>49</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>50</sup> See, E4 and E5.

<sup>51</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).

valuation placed on the Subject 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. However, there is insufficient evidence to quantify and assign an appropriate relief.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

## **VII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Otoe County Board of Equalization determining the taxable value of the Subject Property in Case No. 13A 018 for tax year 2013 is affirmed.
2. The decision of the Otoe County Board of Equalization determining the taxable value of the Subject Property in Case No. 14A 031 for tax year 2014 is affirmed.
3. The taxable value of the Subject Property in Case No. 13A 018 for tax year 2013 is \$32,860.
4. The taxable value of the Subject Property in Case No. 14A 031 for tax year 2014 is \$26,790.
5. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2013 for the 11.3 acre parcel found in Case No. 13A 018 and tax year 2014 for the 7.88 acre parcel found in Case No. 14A 031.

9. This Decision and Order is effective for purposes of appeal on April 22, 2015.<sup>52</sup>

Signed and Sealed: April 22, 2015

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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<sup>52</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.