

**NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

V. DAVID-SONS LLC,)	
)	
Appellant,)	CASE NOs 05A-076, 05A-077, 05A-078 &
)	05A-079
v.)	
)	DECISION AND ORDER REVERSING
KEITH COUNTY BOARD OF)	THE DECISION OF THE KEITH
EQUALIZATION,)	COUNTY BOARD OF EQUALIZATION
)	
Appellee.)	
)	

The above-captioned cases were called for a hearing on the merits of appeals by V. David-Sons LLC to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Hampton Inn, 200 Platte Oasis Parkway, North Platte, Nebraska, on June 28, 2006, pursuant to a Notice and Order for Hearing issued March 8, 2006. Commissioners Wickersham, Warnes, and Lore were present. Commissioner Wickersham presided at the hearing.

Mark B. David, Manager, Member, was present at the hearing on behalf of V. David-Sons LLC ("the Taxpayer"), without legal counsel.

The Keith County Board of Equalization ("the County Board") appeared through legal counsel, Jeffrey M. Eastman, County Attorney for Keith County, Nebraska.

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

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

**I.
FINDINGS**

The Commission finds and determines that:

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

Case No. 05A-076

Description: E½ Section 6, Township 12, Range 35, Keith County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$106,265.00	\$72,058.66	\$105,795.00
Total	\$106,265.00	\$72,058.66	\$105,795.00

Case No. 05A-077

Description: E½ Section 8, Township 12, Range 35, Keith County, Keith County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$102,815.00	\$70,236.62	\$102,800.00
Farm Site	\$600.00	\$	\$600.00
Outbuilding	\$3,160.00	\$	\$3,160.00
Total	\$106,575.00	\$70,236.62	\$106,560.00

Case No. 05A-078

Description: NW¼ Section 8, Township 12, Range 35, Keith County, Keith County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$53,855.00	\$36,210.89	\$53,855.00
Total	\$53,855.00	\$36,210.89	\$53,855.00

Case No. 05A-079

Description: W½ Section 11, Township 12, Range 35, Keith County, Keith County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Agricultural Land	\$165,095.00	\$99,535.51	\$165,095.00
Total	\$165,095.00	\$99,535.51	\$165,095.00

3. The Taxpayer timely filed appeals of the County Board's decisions to the Commission.
4. The County Board was served with Notices in Lieu of Summons and duly answered those Notices.
5. The Taxpayer's appeals were consolidated for hearing by order of the Commission.
6. An Order for Hearing and Notice of Hearing issued on March 8, 2006, set a hearing of the Taxpayer's appeals for June 28, 2006, at 8:00 a.m. CDST.
7. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
8. For reasons stated below, the Taxpayer has adduced sufficient, clear and convincing evidence that the decisions of the County Board are unreasonable or arbitrary, taxable values as determined by the County Board are unreasonable or arbitrary, and the decisions of the County Board should be vacated and reversed.

9. Taxable value of each parcel for the tax year 2005 is:

Case No 05A-76

Agricultural land	\$83,796.00
Total	<u>\$83,796.00</u>

Case No 05A-77

Agricultural land	\$81,734.00
Farm Site	\$ 600.00
Outbuildings	\$ 3,160.00
Total	<u>\$85,494.00</u>

Case No 05A-78

Agricultural land	\$42,833.00
Total	<u>\$42,833.00</u>

Case No 05A-79

Agricultural land	\$108,040.00
Total	<u>\$108,040.00</u>

II.
CONCLUSIONS OF LAW

1. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998)
2. The Commission has jurisdiction over the parties to this appeal.

3. “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).
4. 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).
5. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
6. “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).
7. 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).

8. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).
9. Qualified agricultural land and horticultural land shall be valued for purposes of taxation at eighty percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2003).
10. Qualified agricultural land and horticultural land means land which is primarily used for the production of agricultural or horticultural products, including wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products. Land retained or protected for future agricultural or horticultural uses under a conservation easement as provided in the Conservation and Preservation Easements Act shall be defined as agricultural land or horticultural land. Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land. Land that is zoned predominantly for purposes other than agricultural or horticultural use shall not be assessed as agricultural land or horticultural land. Neb. Rev. Stat. §77-1359 (1) (Reissue 2003).
11. Agricultural or horticultural products include grain and feed crops; forages and sod crops; animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry; and fruits, vegetables, flowers, seeds, grasses, trees, timber, and other horticultural crops. Neb. Rev. Stat. §77-1359 (2) (Reissue 2003).
12. No residential, commercial, industrial, or agricultural building or enclosed structure or the directly associated land or site of the building or enclosed structure shall be assessed

- as qualified agricultural or horticultural land. Neb. Rev. Stat. §77-1361 (2) (Reissue 2003).
13. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
 14. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
 15. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
 16. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).

17. "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).
18. 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).
19. 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).
20. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

III. DISCUSSION

The subject property consists of four parcels of agricultural land and horticultural land with improvements on one parcel. The parcels are predominately used as dry crop land and grassland. The Taxpayer in its protest to the County Board sought a reduction in the value of its dry crop land because a well drilling moratorium had been imposed with the effect of removing any irrigation potential that the dry crop land component of the subject property had prior to the moratorium. The moratorium became effective July 1, 2004.

The Taxpayer's evidence is that the dry crop land component of the subject property had irrigation potential prior to the moratorium but did not have irrigation potential on January 1, 2005, because of the moratorium. Absence of irrigation potential is a factor that can have a negative effect on the value of dry crop land. *Nebraska Farm Real Estate Market Developments 2005-2006*, Bruce B. Johnson, Ben Blomendahl, Kyle Overturf, University of Nebraska-Lincoln, pgs 30 and 31. No sales of dry crop land with irrigation potential occurred after July 1, 2004, in Keith County. The Taxpayer's has also shown that the best evidence of the impact of a well drilling moratorium on dry crop land with irrigation potential can be derived from sales of real property with the same characteristics in Perkins County where well drilling moratoriums or water usage restrictions have been in effect for several years.

The next inquiry is whether dry crop land with irrigation potential in Perkins county is sufficiently similar to the subject property for comparison. The Subject property is in an area of Keith County in which the soils types are described as being in a Sarben-Vetal association, a Kuma-Duroc association, or a Satanta-Kuma association. *Soil Survey of Keith County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, General Soil Map. (1995). Those associations describe lands that are nearly level, to lands with moderately steep slopes and mixtures of sand, loam and silt. *Id.* pgs 9, 14, and 15. The predominate soil associations in Perkins County are Rosebud-Kuma Mace association, Kuma Satanta association, Satanta-Woodly -Sarben association, Keith-Kuma association, and Ulysses-Colby-Keith, association. *Soil Survey of Perkins County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, General Soil Map. (1991). Those associations describe lands that are nearly level to strongly sloping. *Id.* Gentle slopes are the

predominate characteristic. Id. The soils are all well drained mixtures of sand, loam, and silt. Id. The descriptions given are not intended to minimize any real difference that might be apparent on a site inspection of any specific parcel. The area in which the subject property is located in Keith County shares general soil characteristics despite differences in the names of the soil associations with lands in Perkins County. Differences in the names are not significant as they are expected to change over time and from County to County. *Soil Survey of Keith County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, pg 6. (1995). and *Soil Survey of Perkins County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, pg 7, (1991). The potential for irrigation is well distributed in Perkins County as evidenced by well maps provided by the Property Tax Administrator. *2005 Reports and Opinions of the Property Tax Administrator, Perkins County*, Exhibit 68A - page 3. Sales of dry crop land in Perkins County may be used to indicate value for the dry crop land component of the subject property because the lands share soil characteristics and are in adjacent counties.

Soil types as found in the soil surveys are converted to classes and subclasses of land as prescribed by the Property Tax Administrator. Neb. Rev. Stat. §77-1362 (Revised Reissue 2003). The result is that soil types which are alike will be converted to like subclasses, land valuation groups (LCGs), of agricultural land and horticultural land. This allows comparisons between lands in one county with lands in another.

VwB is a soil type identified in Keith County. *Soil Survey of Keith County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, pg 68-69. (1995). VwB soil is not identified in Perkins County but a comparable soil VeB is identified.

Soil Survey of Perkins County, Nebraska, United States Department of Agriculture, Natural Resources Conservation Service, pg 57-58, (1991). SaD soils in Keith County as found in the subject property are considered to have dry cropland capacity. *Soil Survey of Keith County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, pg 138, (1995). SaD soil in Perkins County are considered to have dry crop land capacity. *Soil Survey of Perkins County, Nebraska*, United States Department of Agriculture, Natural Resources Conservation Service, pg 125, (1991). The differences in the production capacity of soils included within LCGs for Keith County as found on the subject property are not materially different than the soils included within the same LCGs for Perkins County. Values as assigned to LCGs in Perkins County are valid for the same LCGs as found in the subject property.

The Commission notes that if sales necessary to indicate value, are not available in a county the assessor is authorized to utilize sales in another county to determine values. Neb. Rev. Stat. §77-1377 (Reissue 2003).

The evidence is that there were no sales of dry crop land with irrigation potential in Keith County after the well moratorium went in to effect.

For a three year period ending June 30, 2004, 61 sales of agricultural land and horticultural land with a 95% usage as dry crop land occurred in Perkins County. *2005 Reports and Opinions of the Property Tax Administrator, Perkins County*, pg 39. The median assessment to sales ratio for those 61 sales was 75.73. Id That ratio indicates that assessed values as determined by the Perkins County assessor were near 80% of market value. The COD for those 61 sales was 6.90. Id. The COD is a measure of assessment uniformity. *Supra*, 98. A COD of 6.9 indicates that there is high degree of uniformity. The PRD for those 61 sales is

100.11. The PRD is a measure of assessment vertical uniformity. *Supra*, 100. The PRD indicates whether, for example, higher value properties are assessed at a lower or higher percentage of value than lower valued properties. A PRD of 100.11 indicates very little assessment bias. The statistics indicate that values determined by the Perkins County Assessor for the class of dry crop land and its subclasses produce good indications of actual value for dry crop land when applied to a parcel.

No sales of dry crop land with irrigation potential occurred in Keith County after July 1, 2004, the date of a well drilling moratorium applicable to the subject property. Value of the subject property would most accurately be determined by reference to sales of dry crop land with irrigation potential but subject to a well drilling moratorium. Perkins County has experienced both a well drilling moratorium and limitations on the use of water for irrigation over a period of several years allowing any market impact of restrictions or limitations to be realized. Soil associations for Perkins County are similar to those applicable to the subject property. Assessment practices in Perkins County produce taxable values, which when analyzed indicate high quality assessment practices meeting statutory guidelines. The evidence that subclass values used by the Perkins County Assessor to determine taxable value of dry crop land in that county should be applied to the subject property is clear and convincing.

The County Board adjusted the value for one parcel of the subject property based on a change in use classification. (E2:1). With that change in use classification and application of values for subclasses LCGs of dry crop land utilized in Perkins County, resulting values for the subject parcels are as shown in the following table:

Case 05A-076

Legal Description: E1/2 Section 6, Township12, Range 35

ID 159501499

Keith County Values

Perkins County Values

Soil Name	LCG Code	Acres	Ag/Acre	Value	Ag/Acre	Value
KUB	1D	19.67	540	10,620	350	6,885
SBB	1D	2.48	540	1,340	350	868
SBC	2D	14.11	425	5,995	330	4,656
VWB	3D1	89.80	385	34,575	320	28,736
SAC	3D	48.98	335	16,410	260	12,735
SAD	4D1	53.04	335	17,770	210	11,138
LP	3D1	2.12	385	815	320	678
LP	3G1	3.88	220	855	200	776
SAC	3G	1.79	200	360	200	358
SAD	4G1	16.98	195	3,310	190	3,226
KUB	1G	1.49	220	330	220	328
VWB	3G1	15.27	220	3,360	220	3,359
SAC	3G	13.57	220	2,985	220	2,985
SAD	4G1	30.64	220	6,740	220	6,741
SBC	2G	1.04	220	230	220	229
ROAD		6.08	0	0	0	0
WASTE		3.89	25	95	25	97
Total		324.83		105,790		83,796

Case 05A-077

Legal Description: E1/2 Section 8 Township 12, Range 35

ID 159502000

Keith County Values (after assessors land use changes)

Perkins County Values

Soil Name	LCG Code	Acres	Ag/Acre	Value	Ag/Acre	Value
KUB	1D	6.70	540	3620	350	2,345
SBB	1D	33.24	540	17950	350	11,634
SBC	2D	6.58	425	2795	330	2,171
VWB	3D1	77.03	385	29655	320	24,650

SAC	3D	33.75	335	11305	260	8,775
SAD	4D1	33.68	335	11285	210	7,073
VDB	4D1	5.75	335	1925	210	1,208
LP	3D1	1.36	385	525	320	435
LP	3G1	2.55	220	560	220	561
VWB	3G	17.68	220	3890	220	3,890
SAC	3G	21.00	220	4620	220	4,620
SAD	4G1	2.31	220	510	220	508
VDB	4G1	6.06	220	1335	220	1,333
VWB	3G1	3.00	215	645	215	645
SAC	3G1	32.70	200	6540	195	6,377
SAD	4G1	29.00	195	5655	190	5,510
ROAD		3.99	0	0	0	0
SITE		0.50	1200	600	1200	600
Total		316.88		103,415		82,334

Case 05A-078

Legal Description: NW1/4 Section 9, Township 12, Range 35

ID 159502100

Keith County Value

Perkins County Values

Soil Name	LCG Code	Acres	Ag/Acre Value		Ag/Acre	Value
SBB	1D	3.59	540	1940	350	1,256
VWB	3D1	67.06	385	25820	320	21,459
SAC	3D	73.99	335	24785	260	19,237
SAD	4D1	3.43	335	1150	210	720
ROAD		3.96	0	0	0	0
WASTE		6.40	25	160	25	160
Total		158.43		53,855		42,833

Case 05A-079

Legal Description: W1/2 Section 11, Township 12, Range 35

ID 159502800

Keith County Value					Perkins County Values	
Soil Name	LCG Code	Acres	Ag/Acre	Value	Ag/Acre	Value
KEB	1D	132.93	540	71780	350	46526
KUB	1D	159.68	540	86225	350	55888
KEC	2D	11.58	425	4920	330	3821
LP	3D1	5.64	385	2170	320	1805
ROAD		5.98	0	0	0	0
Total		315.81		165,095		108,040

The column headed Perkins County values reflects values which would be assigned to each parcel of the subject property if value is based on classifications and acreage of each classification as determined by Keith County and the values assigned by Perkins County to those classifications. Valuation in that manner recognizes differences in the actual value of dry crop land with irrigation potential and dry crop land without irrigation potential and the effect of the July 1, 2004, well drilling moratorium on actual and taxable value of the subject property.

The decisions of the County Board were unreasonable or arbitrary and should be reversed.

**V.
ORDER**

IT IS THEREFORE ORDERED THAT:

1. The decisions of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, are vacated and reversed.
2. Taxable value of each parcel of the subject property for the tax year 2005 is:

Case No 05A-76

Agricultural land	\$83,796.00
Total	<u>\$83,796.00</u>

Case No 05A-77

Agricultural land	\$81,734.00
Farm Site	\$ 600.00
Outbuildings	\$ 3,160.00
Total	<u>\$85,494.00</u>

Case No 05A-78

Agricultural land	\$42,833.00
Total	<u>\$42,833.00</u>

Case No 05A-79

Agricultural land	\$108,040.00
Total	<u>\$108,040.00</u>

3. This decision, if no appeal is timely filed, shall be certified to the Keith County Treasurer, and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.

7. This order is effective for purposes of appeal July 24, 2006.

Signed and Sealed. July 24, 2006.

Wm. R. Wickersham, Commissioner

Susan S. Lore, Commissioner

William C. Warnes, Commissioner

SEAL

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