

NATURE OF THE CASE

Ward F. Hoppe ("the Taxpayer") owns one parcel of real property located in Lancaster County, Nebraska. The parcel has two separate tax identification numbers, since part of the parcel is located within the city limits of the City of Lincoln. The Taxpayer filed a protest with the Lancaster County Board of Equalization ("the County") alleging that the parcel located outside the city limits of the City of Lincoln ("the subject property") was overvalued. By way of relief, Taxpayer requested that the proposed 1999 valuation be reduced. The County denied the protest, from which decision Taxpayer appeals. Thereafter Taxpayer filed a "Special Valuation Application for Special Tax Treatment of Land Zoned and Used Exclusively for Agricultural or Horticultural Use" for the subject property. The Lancaster County Assessor ("the Assessor") originally approved the request. The Assessor later reversed the approval. The Taxpayer filed a protest with the County challenging the decision to deny the Special Use Valuation. The County denied the protest, from which decision Taxpayer also appeals.

EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016(5) (1999 Supp.) without objection: the Commission's case file for Case No. 99R-62; the Case File for Case Number 99A-177 which was consolidated with Case Number 99R-62 for purpose of hearing; the Nebraska Constitution; the Nebraska State Statutes and the amendments to those statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); the Tax Equalization and Review Commission's Brochure; *Title 298, Nebraska Administrative Code* (the Real Estate Appraiser Board's Rules

and Regulations); the Property Tax Administrator's Published *1999 Ratios and Measures of Central Tendency* (published pursuant to Neb. Rev. Stat. §77-1327(6)); *the 1999 County Profiles for Lancaster County*; the Property Tax Administrator's *1999 Statistical Measures*; the 1999 Assessor's Interviews by the Property Tax Division; the 1999 Qualified Sales Report Profiles; the *2000 Formal Plan of Equalization*; the *1999 Statewide Equalization Proceedings*; the Nebraska Real Estate Appraiser Board Certification Requirements; the Nebraska Real Estate Appraiser Board Education Core Curriculum; the *Marshall Valuation Service*; the *Marshall Valuation Service* Historical Information; the *Nebraska Agricultural Land Valuation Manual (1999)*; the *Nebraska Assessor's Reference Manual (Volumes 1 and 2)*; four standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition (1996)*; *Property Appraisal and Assessment Administration (1990)*; *Glossary for Property Appraisal and Assessment (1998)*; and *Mass Appraisal of Real Property (1999)*; the *Dictionary of Real Estate Appraisal, 3rd Ed.*, Appraisal Institute (1993); the Soil Survey for Lancaster County; and the *Uniform Standards of Professional Appraisal Practice (1999)*.

The Commission also received certain exhibits and testimony during the course of the hearing.

I. ISSUE BEFORE THE COMMISSION

Neb. Rev. Stat. §77-1502 (1998 Cum. Supp.) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to

those issues presented to the County Board of Equalization and those issues sufficiently related in content and context to be deemed the same question at both levels. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N. W. 2d 353, 357 (1998). The Taxpayer repeatedly stated on the record that the only issue was whether the property qualifies as “agricultural” land entitled to valuation at 80% of its actual or fair market value for agricultural purposes.

II. FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (1999 Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (1999 Supp.).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

A. PROCEDURAL FINDINGS

1. That Taxpayer is the owner of record of a parcel of real property located in Lancaster County, Nebraska. That the parcel has two separate tax identification numbers, since part of the parcel is located within the city limits of the City of Lincoln. That the part located outside of the city limits is referred to as “the subject property.”

2. That the Lancaster County Assessor ("Assessor") proposed valuing one of the subject property for purposes of taxation in the amount of \$58,745 as of January 1, 1999 ("the assessment date"). (E5:23).
3. That the assessed value is comprised of three components: improvements in the amount of \$23,696 (for a "market adjustment"); \$28,435 (for a barn); and land in the amount of \$30,310. (E5:16).
4. That Taxpayer timely filed a protest of the proposed valuation, and requested that the parcel be valued in the amount of \$17,000. (E5:13).
5. That the County denied the protest.
6. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
7. That on July 23, 1999, Taxpayer executed a "Special Valuation Application" for the subject property. (E6:23).
8. That the document was filed with the Lancaster County Assessor's Office on July 29, 1999. (E6:23).
9. That the Assessor approved the Application on August 16, 1999. (E6:23). That the Assessor then disapproved the Application on September 8, 1999. (E6:23).
10. That the Taxpayer timely filed a protest of that decision.
11. That the County denied the protest.
12. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).
13. That the valuation of the improvements is not at issue.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. That the subject property consists of a parcel of land in Lancaster County, Nebraska, legally described as Lot 45, NW EX W PT Section 35, Township 10, Range 7, consisting of approximately 8.66 acres of land. (E5:14, 15). That the parcel is identified in the Assessor's Office as Parcel ID Number 17-35-100-008-000.
2. That the subject property has a barn located on it, and is zoned "AG Agricultural." That the subject property is outside of, but adjacent to, the city limits of the City of Lincoln.
3. That the subject property is part of a single parcel of land owned by the Taxpayer. That the part of the parcel located outside of the city limits is identified in the Assessor's Office as Parcel ID Number 17-35-100-009-000. That the parcel is "developed" in that the Taxpayer's home is located on the property, as is a barn which has both electric service and a well. (E8; E5:7).
4. That the Taxpayer testified that he purchased the parcel in approximately 1979 from his father, who had originally purchased it in approximately 1977. That thereafter the Taxpayer learned that he and his wife were to have a child. That the Taxpayer sought to have his child educated in the Lincoln Public School System. That the Taxpayer therefore approached the appropriate body to have the parcel incorporated into the city limits.
5. That the Taxpayer testified that the political subdivision was concerned that the parcel would be subdivided, and therefore Taxpayer volunteered to have only part of the parcel upon which the home would be built be incorporated into the city limits.

6. That once part of the parcel was incorporated into the city limits, Taxpayer built a home on that part of the parcel located within the city limits, in approximately 1981 or 1982. That the part of the parcel with the residence is subject to taxation by the Lincoln Public Schools system, while the parcel outside of the city limits is not.
7. That the subject property is primarily pasture. That approximately 1 acre of the subject property has a barn, a garden of approximately 100 feet by 100 feet in size located on it, and between 12 and 16 apple trees. That the remaining 7.66 acres is fenced around the perimeter, and is also "cross fenced." That the Taxpayer pastures 4 horses and 1 mule on this land.
8. That the Taxpayer also has approximately 30 chickens on the property, which produce eggs.
9. That the Taxpayer uses the garden and apple trees to produce apples and vegetables for his family. That the Taxpayer has sold eggs produced on the land to others. That the Taxpayer, in 1998, produced approximately 60 gallons of apple cider from his apple trees, and produced approximately 30 gallons of apple cider from his apple trees in 1999. That one horse which had been pastured on the property has been sold for \$1,000. That Taxpayer has not reported any income from this property (other than the \$1,000 for the sale of the horse) on his federal income tax return.
10. That the part of the subject property which has the barn, and the one-acre of land which is associated with that barn, is not eligible for "Special Valuation" under the applicable provisions of Neb. Rev. Stat. §77-1361 (2) (1998 Cum. Supp.).

11. That the Taxpayer characterizes his "agricultural" use of the subject property as a "hobby." (Testimony of Taxpayer, and E6:20).
12. That the Taxpayer's own "expert" testified that the subject property is not an "economically viable" agricultural operation.
13. That the City of Lincoln has a population of at least 203,076 according to a 1994 estimate. *1999 Reports and Opinion of the Property Tax Administrator*, p. 9, incorporated in the *1999 Statewide Equalization Proceedings*. The City of Lincoln is therefore a City of the Primary Class as defined in Neb. Rev. Stat. §15-101 (Reissue 1997).
14. That cities of the primary class have zoning jurisdiction which extends three miles beyond the city limits. Neb. Rev. Stat. §15-902 (Reissue 1997). That the City of Lincoln and/or Lancaster County has/have adopted zoning ordinances governing "Agricultural" property as set forth in Exhibit 9. That these ordinances govern the use of the subject property.
15. That the Zoning Ordinances for "AG Agriculture District," Section 27.07, in particular govern the use of the subject property. That the function of the Ordinance is intended to "encourage a vigorous agricultural industry throughout the county and to preserve and protect agricultural production by limiting urban sprawl as typified by urban or acreage development." (E9:1).
16. That but for the tax treatment which must be accorded the two parcels due to property tax considerations, the parcel is a single "acreage."

17. That the Taxpayer testified that agricultural land within Lancaster County has an actual or fair market value of between \$800 per acre and \$1100 per acre. That the subject property is assessed at approximately \$3,500 per acre. ($\$30,310 \div 8.66 \text{ acres} = \$3,500 \text{ per acre.}$)
That therefore the land component of the subject property has an actual value reflecting a potential use other than agricultural or horticultural use.
18. That the property is used as a "hobby farm." (E6:20, Testimony of Taxpayer).
19. That the Special Valuation Statutes were not designed to "protect" hobby farms.
20. That no evidence has been adduced to establish that the decision of the County as to the Special Valuation application was unreasonable or arbitrary.
21. That therefore the decision of the County to deny Taxpayer's protest as to the denial of his application for Special Valuation must be affirmed.
22. Further, that no evidence has been adduced to establish that the subject property is overvalued. That the Taxpayer agreed on the record that if, in fact, the subject property is not "agricultural land," then the value as determined by the Assessor (and therefore the County), was appropriate.
23. That although the Taxpayer alleged in his Protest Form (E5:13), that the valuation of the subject property was not equalized with residential and commercial property, no evidence was adduced by the Taxpayer to support these allegations.
24. Further that the only evidence and argument presented by the Taxpayer to the Commission concerned the question of whether or not the "hobby farm" qualifies for Special Valuation under the applicable provisions of state law.

25. That from the record before it, the Commission finds and determines that the actual or fair market value of the land component of the subject property as of the assessment date was \$30,310.
26. That therefore the assessed value of the subject property for tax year 1999 as determined by the County is supported by the evidence.
27. That insufficient evidence has been adduced to establish that the valuation decision of the County was unreasonable or arbitrary.
28. That therefore the valuation decision of the County must be affirmed.

III. ANALYSIS

A. OVERVIEW

The only issue before the Commission is whether the subject property, as a "hobby farm or as an "acreage," qualifies for "Special Valuation" under the applicable provisions of state law. This specific question is a case of first impression for the Commission. As a question of first impression, the Commission looks to the Constitution, state statutes, case law, and applicable rules and regulations in order to decide whether to grant the relief requested in the appeal.

The Constitution provides in Article VIII, Section 1, that:

"(1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises and as defined by the Legislature except as otherwise provided in or permitted by this Constitution; . . . (5) The Legislature may enact laws to provide that the value of land *actively devoted to agricultural or*

horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses; . . ." (Emphasis added.)

The Legislature, in furtherance of these constitutional provisions, has determined that:

"(1) Agricultural land and horticultural land *used solely for agricultural or horticultural purposes* shall constitute a separate and distinct class of property for purposes of property taxation. Agricultural land and horticultural land shall be classified using the agricultural land valuation manual issued by the Property Tax Administrator pursuant to section 77-1330 which shall be developed using the methods prescribed in section 77-1362. (2) 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 agricultural land or horticultural land." (Emphasis added.) Neb. Rev. Stat. §77-1361 (1998 Cum. Supp.).

The Legislature has also adopted definitions governing the determination of whether specific property constitutes "agricultural land." That the statutes provide that:

"For purposes of sections 77-1359 to 77-1363: (1) Agricultural land and horticultural land shall mean 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; and (2) Agricultural or horticultural products shall 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, and other horticultural crops." (Emphasis added.) Neb. Rev. Stat. §77-1359 (1998 Cum. Supp.).

The Legislature, however, is careful to distinguish "agricultural" land from that land which has "development" potential. The Legislature has provided that:

"Any land which has an actual value as defined in section 77-112 reflecting a potential use other than agricultural or horticultural use, is located outside the corporate boundaries of any sanitary and improvement district, city, or village, *is used exclusively for agricultural or horticultural use*, and is zoned for agricultural or horticultural use shall be valued at eighty percent of its actual value for agricultural or horticultural use pursuant to sections 77-1359 to 77-1363 and not at the actual value it would have if applied to other than agricultural or horticultural use if application for such special valuation is made pursuant to sections 77-1343 to 77-1348. The special valuation provisions may be applicable

to real property included within the corporate boundaries of a city or village if the real property is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement. The special valuation provisions shall not be applicable to that portion of lands zoned predominantly for agricultural or horticultural use if such lands have been subdivided. No land which has an actual value as defined in section 77-112 reflecting a potential use other than agricultural or horticultural use shall be valued at eighty percent of its actual value for agricultural or horticultural use unless it receives the special valuation pursuant to sections 77-1343 to 77-1348.

(2) The eligibility of land for the special valuation provisions of this section shall be determined as of January 1, but if land so qualified becomes disqualified prior to the levy date of the same year, it shall be valued at its actual value as defined by section 77-112 without regard to this section. If the land becomes disqualified after the date of levy, its valuation for that year shall continue as provided in this section." (Emphasis added.) Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.).

The statutes, however, are silent as to the question of whether "hobby farms" qualify for "Special Valuation" under this section. The "Special Valuation" referred to, of course, is an assessed value for the land component only at 80% of actual or fair market of the land for agricultural or horticultural use.

The Commission has been unable to locate any case law construing the "Special Valuation" provisions. The Commission therefore reviewed the *County Assessor's Reference*

Manual (Volumes 1 and 2) (Reissue 1999), The Agricultural Land Valuation Manual (Reissue 1999), and the applicable rules and regulations for further guidance. Nothing contained in that information is of assistance in determining whether "hobby farms" or "acreages" should qualify for "Special Valuation."

B.
PURPOSE OF THE LAW OF SPECIAL VALUATION

As noted above, no court decisions have been issued construing these new statutes. Under these circumstances, the Commission has an affirmative obligation to apply the statutes in accordance with its own understanding of it. See, e. g., *State v. Moore*, 250 Neb. 805, 819, 553 N.W.2d 120, 132 (1996).

There is a common thread running through both the Constitutional and statutory provisions. The Constitution requires that only "land *actively devoted* to agricultural or horticultural use" be qualified for "agricultural" valuation. (Emphasis added). Art. VIII, Neb. Const., Sec. 1(5). The "general" agricultural provisions of state law also require that only "land which is *primarily used* for the production of agricultural or horticultural products" be qualified for agricultural valuation. (Emphasis added). Neb. Rev. Stat. §77-1359 (1998 Cum. Supp.). The "Special Valuation" statutes also echo this theme: "Any land which . . . is used *exclusively* for agricultural or horticultural use, . . ." Neb. Rev. Stat. §77-1344 (1) (1998 Cum. Supp.). The question, therefore, is what the Legislature intended by placing such emphasis on the definition of 'exclusive agricultural use' in Neb. Rev. Stat. §77-1344 (1).

The question of what constitutes 'exclusive agricultural use,' it should be noted, has been raised in other jurisdictions. The First Circuit Court of Appeal for the State of Louisiana was presented with a similar question in 1957. That Court determined that for purposes of Louisiana's homestead laws "[W]e think the manifest legislative intent of Louisiana's homestead entry act, . . . to be to enable an individual to obtain from the unused lands of the State a tract upon which to establish a home and to enter into the *serious agricultural cultivation thereof*; and not to enable a citizen to obtain State lands to be *used as a hobby or simply as an investment*." (Citations omitted. Emphasis added.) *McClendon v. Wall*, 96 So. 246, 249 (1957). The North Dakota Supreme Court also concluded that "hobby farms" are not included within the ordinary definition of "agricultural use." *Butts Feed Lots, Inc., v. Board of County Commissioners of Foster County*, 261 N.W.2d 667 (1977).

In fact, most courts conclude that "hobby farms" and "acreages" are not included within the phrase "agricultural use" unless the statutes or rules and regulations specifically include those uses. Wisconsin courts, in an unpublished decision, decided that "agricultural use" includes "hobby farms," but only when zoning ordinances specifically included "hobby farming" in the definition of "agricultural" districts. *Town of Grafton v. Lockwood*, 183, 249, 516 N.W.2d 19 (1994). Connecticut courts reached the same conclusion. *Magnarelli v. Durham Zoning Board of Appeals*, 1997 WL 187185 (Connecticut Superior Court, Memorandum of Decision issued April 7, 1997).

Only one state has reached a different conclusion. The Texas Court of Appeals has determined that the phrase "land that is currently devoted *principally* to agricultural use" does include "hobby farms" and "recreational use." (Emphasis added). *Moore v. Tarrant Appraisal*

District, 823 S.W.2d 418 (1992). The view of the majority of the courts called upon to decide the matter, however, are clearly against the Texas decision.

These decisions from other jurisdictions are not, of course, binding on the Commission. These decisions do however, illustrate that including "hobby farms" and "acreages" within the plain and ordinary meaning of phrases such as "land *actively devoted* to agricultural or horticultural use;" "land which is *primarily used* for the production of agricultural or horticultural products land" or "land which . . . is used *exclusively* for agricultural or horticultural use, . . ." is not generally accepted.

The Commission, however, in interpreting state statutes, must utilize the rules of construction set forth by Nebraska courts. The Nebraska Supreme Court has noted that where the issue is one of statutory construction:

"The general rules of statutory construction require that statutory language is to be given its plain and ordinary meaning where possible, and when the words of the statute are plain, direct, and unambiguous, an appellate court should not indulge in interpretation. An appellate court will, if possible, give effect to every word, clause, and sentence of a statute, since the Legislature is presumed to have intended every provision to have a meaning. Finally, '[t]he components of a series or collection of statutes pertaining to a certain subject matter may be conjunctively considered and construed to determine the intent of the Legislature so that different provisions of the act are consistent, harmonious, and sensible.'"

(Citations omitted.) *Siliphet v. IBP, Inc.*, 8 Neb.App. 48, 58, 587 N.W.2d 895, 902 (1999).

The Commission noted during the hearing that the provisions of Neb. Rev. Stat. §77-1359 (1998 Cum. Supp.) were substantially revised from the provisions set forth in Neb. Rev. Stat. §77-1359 (Reissue 1996). The former provisions held in applicable part that:

"For purposes of sections 77-1359 to 77-1365: (1) Agricultural land and horticultural land shall mean a parcel of land (a) over twenty acres in size which is used for the production of agricultural or horticultural products; (b) which is wasteland lying in or adjacent to and in common ownership or management with land used for the production of agricultural or horticultural products, or (c) of twenty acres or less in size when such land (i) is managed in conjunction with other agricultural land or horticultural land which when totaled exceeds twenty acres in size or (ii) meets the requirements of section 77-1360." Neb. Rev. Stat. §77-1359 (Reissue 1996).

Neb. Rev. Stat. §77-1360 (Reissue 1996), in turn, provided that:

"A parcel of land of twenty acres or less size that is not managed as part of an agricultural or horticultural operation exceeding twenty acres in size shall qualify for assessment as agricultural land or horticultural land only upon submission of proof by the owner that sales of agricultural or horticultural products of a gross value or more than one thousand dollars were produced from the land or from feeding products grown upon such land in two of the three previous years or upon submission of proof that such land is under the land-use requirements or restrictions required in subsection (1) of section 77-1359. The owner shall certify on or before March 1 of each year on a form prescribed and subject to audit by the

Department of Revenue that the land meets the requirements of this section."

Neb. Rev. Stat. §77-1360 (Reissue 1996).

Neb. Rev. Stat. §77-1360 has been repealed outright. (1997 Neb. Laws, L. B. 270, §110). Neb.

Rev. Stat. §77-1359 has also been amended. It now provides:

"For purposes of sections 77-1359 to 77-1363: (1) Agricultural land and horticultural land shall mean 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 that is zoned predominantly for purposes other than agricultural or horticultural use shall be assessed as agricultural land or horticultural land; and (2) Agricultural or horticultural products shall include grain and fee 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, and other horticultural crops." Neb. Rev. Stat. §77-1359 (1998 Cum. Supp.).

The former law clearly was a law of "inclusion." That is, it made specific provision for parcels of land smaller than 20 acres in size which produced \$1,000 or more of agricultural products. One thousand dollars in income from a parcel of land of twenty acres or less clearly contemplates "hobby farms" and "acreages," since parcels of that size are clearly not viable economic agricultural or horticultural units, whether they are "farms" or "ranches." Again, however, those provisions were specifically repealed by the Legislature. In recognizing this substantive change in the law, the Commission is reminded that:

“The Legislature, in enacting [an amendatory] statute, is presumed to have known the preexisting law, and [it is presumed] that the language was intentionally changed for the purpose of effecting a change in the law itself. . . .” (Citations omitted.). *Hansmeyer v. Nebraska Public Power Dist.*, 6 Neb.App. 889, 900, 578 N.W.2d 476, 484 (1998).

The new law can therefore only be considered a law of "exclusion," in that no provision has been made by which the definitions of phrases such as "land *actively devoted* to agricultural or horticultural use;" "land which is *primarily used* for the production of agricultural or horticultural products land" or "land which . . . is used *exclusively* for agricultural or horticultural use," can include "hobby farms" or "acreages." The Commission must, therefore, based on the language of the constitution and the revised statutes, find and determine that the Legislature specifically intended that the phrase "used exclusively for agricultural or horticultural use" set forth in Neb. Rev. Stat. §77-1344(1998 Cum. Supp.) be interpreted as excluding "hobby farms" and "acreages." This conclusion finds support in the precept that:

"In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result... Statutory language is to be given its plain and ordinary meaning. . ." *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N. W. 2D 907, 913 (1996).

The Commission's interpretation of the statute yields a sensible result. It is clear that whether one considers a twenty acre acreage on the outskirts of the City of Lincoln, or an 80-acre acreage in the Pine Ridge area of Dawes County, neither parcel is a viable economic unit for purposes of agricultural production. The Constitution and the laws of this state are designed to

protect only those viable economic agricultural or horticultural units, whether they are a "farm," or a "ranch."

The constitutional provision, and the Legislature's responses to that provision, are clearly designed to allow the Legislature to "protect" such "agricultural property" from the influences of residential and commercial development on agricultural market value. Nothing in the law can be seen as intending that "hobby farms" or "acreages" be protected from such influences.

Furthermore, if these "hobby farms" or "acreages" were considered "agricultural" property qualified for "Special Valuation," then the sales of such properties must be included in the *Qualified Agricultural Sales Roster* for each county. The prices paid for these properties would therefore artificially inflate the value of truly "agricultural" or "horticultural" land, which is the very problem the "Special Valuation" statutes were supposed to protect against. Finally, it should be clear that the only result of granting "Special Valuation" to "hobby farms" and "acreages" would be to shift more of the tax burden onto the residential and commercial class of taxpayers. Nothing in the constitution or state laws would support such a shift in the tax burden merely to allow the opportunity for some individuals to pursue a hobby.

Finally, the "AG District" zoning ordinance which applies to the subject property also supports the Commission's conclusion. That ordinance, in the introductory paragraph, states:

"This district is designated for agricultural use and is intended to encourage vigorous agricultural industry throughout the county and to preserve and protect agricultural production by limiting urban sprawl as typified by urban or acreage development." (E9:1).

C.
APPLICATION OF THE LAW TO THE FACTS HERE

The Commission must first note that the part of the subject property which has the barn, and the one-acre of land which is associated with that barn, is not eligible for "Special Valuation" under the applicable provisions of Neb. Rev. Stat. §77-1361 (2) (1998 Cum. Supp.).

The Commission must next note that it hears cases as in equity. Neb. Rev. Stat. §77-5016(7) (1999 Supp.). Equity looks through forms to substance. Thus, the Commission "goes to the root of the matter and is not deterred by forms." *Dillon Tire, Inc. v. Fifer*, 256 Neb. 147, 152, 589 N.W.2d 137, 141 (1999). Under these principles of "equity," the subject property, but for the action of the Taxpayer in having the adjacent parcel incorporated into the city limits of the City of Lincoln, would qualify as an acreage in addition to qualifying as a "hobby farm." The value of the "acreage" or "hobby farm" which is the subject of this appeal triggers the "Special Valuation" limitations of Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.).

The law is clear and unequivocal. If the value of "agricultural" land is affected by non-agricultural influences, the "Special Valuation" provisions of Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.) are triggered. This conclusion is mandated by the Court's decision that specific statutes control and take precedence over a general statutes because the special statute is a specific expression of legislative will concerning a particular subject. *See. e. g., Kratochvil v. Motor Club Ins. Ass'n.*, 255 Neb. 977, 588 N.W.2d 565 (Neb. 1999). The Taxpayer testified that agricultural land within Lancaster County has an actual or fair market value of between \$800 per acre and \$1100 per acre. The subject property is assessed at approximately \$3,500 per acre. ($\$30,310 \div 8.66 \text{ acres} = \$3,500 \text{ per acre.}$) The Taxpayer agreed on the record that if, in fact, the

subject property is not "agricultural land," then the value as determined by the Assessor (and therefore the County), was appropriate.

It is clear from this evidence that even if the subject property is "agricultural" land, then the land component of the subject property has an actual value reflecting a potential use other than agricultural or horticultural use. The provisions of Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.) therefore apply.

This statute requires that the land be "used exclusively for agricultural or horticultural use." Given the Commission's conclusion that "hobby farms" and "acreages" do not constitute "exclusive" use, the subject property does not qualify for special valuation under the provisions of Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.). This treatment of the subject property is also consistent with the Assessors' conclusion that other similar property does not qualify for "special valuation" as shown by the list of properties set forth in Exhibit 11. There is, therefore, no evidence that the subject property has been treated differently from other comparable property within Lancaster County.

D. CONCLUSION

Taxpayer's primary request is that the land component of the subject property be accorded the "Special Valuation" tax treatment of Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.) (i.e., 80% of market value for "agricultural" use). The subject property, as either an "acreage" or as a "hobby farm" is not entitled to such treatment since the statutes require the property be devoted exclusively to agricultural or horticultural use. Neb. Rev. Stat. §77-1344(1)(1998 Cum.

Supp.). Taxpayer therefore has failed to satisfy his burden of persuasion as to this allegation. Taxpayer has also alleged that the subject property is overvalued, and the value is not equalized with residential and commercial property. Taxpayer, however, has failed to adduce any evidence in support of this allegation. The Commission therefore concludes that the decisions of the Lancaster County Board of Equalization must be affirmed.

IV. CONCLUSIONS OF LAW

A. JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1999 Supp.).

B. STANDARD OF REVIEW

The Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (1999 Supp.). The Nebraska Court of Appeals, in interpreting similar language found in Neb. Rev. Stat. §77-1511(1998 Cum. Supp.), has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the

contrary. From that point on, 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." *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

"In an appeal to the county board of equalization or to the [Tax Equalization and Review Commission], and from the [Tax Equalization and Review Commission] to this court, the 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." *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999).

C.
SUBSTANTIVE CONCLUSIONS OF LAW

The Commission, from the entire record before it, concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that Taxpayer has not met its burden of proof as required by *US Ecology, supra*. The Commission therefore concludes that the decisions of the Lancaster County Board of Equalization must be affirmed.

V.
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Lancaster County Board of Equalization which denied Taxpayer's protest as to the valuation and equalization of the valuation of the subject property is affirmed.
2. That the decision of the Lancaster County Board of Equalization which denied Taxpayer's protest as to the denial of Taxpayer's request for Special Valuation pursuant to Neb. Rev. Stat. §77-1344 (1998 Cum. Supp.) is also affirmed.
2. That Taxpayer's real property identified in the records of the Lancaster County Assessor's Office as Parcel ID Number 17-35-100-008-000, in Lancaster County, Nebraska, shall be valued as follows for tax year 1999, as determined by the County:

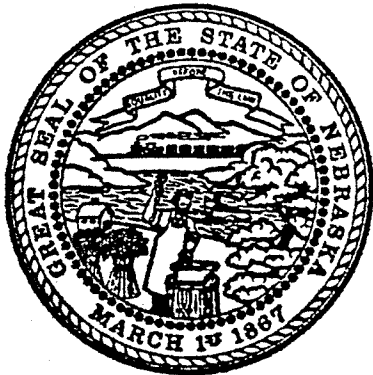
Land	\$30,310
Improvements	\$28,435
Total	\$58,745

3. That this decision, if no appeal is filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1999.


5. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

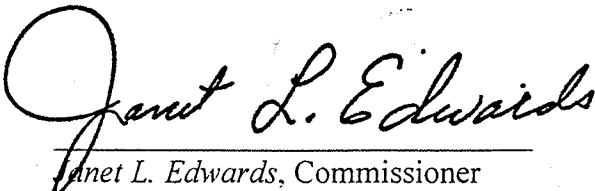
Dated this 19th day of May, 2000.



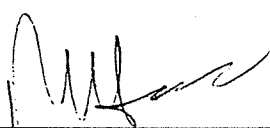
Seal



Mark P. Reynolds, Chairman



Janet L. Edwards, Commissioner



Robert L. Hans, Commissioner