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An Agricultural Law Research Article

Separate Property Tax Classifications for Agricultural Land: Cure or Disease?

by

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Originally published in NEBRASKA LAW REVIEW
64 NEB. L. REV. 313 (1985)

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Note

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Kearney Convention Center, Inc. v. Buffalo County Board of Equalization, 216 Neb. 292, 344 N.W.2d 620 (1984)

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I. INTRODUCTION

Traditionally, property taxes have been levied as a means of raising revenue for local government by taxing all property uniformly and proportionately with all other property in the local taxing district.[1] Uniform taxation was achieved by applying a single tax rate to the

1. NEB. CONST. art. VIII, § 1 ("Taxes shall be levied by valuation uniformly and proportionately upon all tangible property . . . ."). *See* Note, *Classification of Real Property for Tax Purposes in Illinois - Hoffman v. Clark*, 28 DE PAUL L. REV. 849 (1979).

property's actual or fair market value[2] regardless of the property's use.[3] Ideally, this *ad valorem* tax[4] was neutral in its impact, imposing a uniform tax burden on all taxpayers in order to maintain fairness and equity within the tax program. Despite this apparently simple formula, the overall property tax system throughout the United States is much more complex.[5] Many property tax systems have become more complex as a result of a recent trend toward expansion of traditional tax functions. While the principal function of taxation is to raise revenues, the property tax system has increasingly been used to achieve non-revenue goals.[6] Most state legislatures have adopted classifications of property and applied a non-uniform tax rate by property class in order to achieve these non-revenue goals.[7]

Nowhere has the presence of classification within the property tax system manifested itself so clearly as in the area of agriculture. Proponents of a separate classification system for agricultural land argue that such classification is necessary to insure fairness because of the unique nature of agricultural land.[8] In many states this theory has

2. Fair market value is defined as "[t]he amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell . . . ." It is "the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use . . . ." BLACK'S LAW DICTIONARY 537 (5th ed. 1979).

3. G. BENSON, THE AMERICAN PROPERTY TAX: ITS HISTORY, ADMINISTRATION AND ECONOMIC IMPACT 34-35 (1965).

4. Ad valorem taxation is taxation according to value; a tax imposed on the value of property. Traditionally, this tax is imposed by states, counties, and cities on real estate. BLACK'S LAW DICTIONARY 48 (5th ed. 1979).

5. For a discussion of the Nebraska property tax system, see *infra* notes 181-84 and accompanying text.

6. Note, *supra* note 1, at 849. Such goals include subsidizing selected taxpayers by shifting their tax burden to other taxpayers, and influencing private sector decisionmaking by decreasing the tax burden on property that is used for socially desirable purposes. *See also* W. ATTOE, T. HELLER & J. MORGAN, TAXATION AND LAND USE: A SEARCH FOR GOALS 2 (1974); H. LADD, TAX POLICY CONSIDERATIONS UNDERLYING PREFERENTIAL TAX TREATMENT OF OPEN SPACE AND AGRICULTURAL LANDS 6-7 (1978).

7. Note, *supra* note 1, at 849-50 n.9. Classification systems generally fall into one or a combination of the following types: (1) taxation by use value rather than fair market value; (2) differential assessment by ratio (property is assessed at the same rate, but is assessed at a different fraction of market value depending on its use); or (3) assessment at a uniform fraction of market value, but then an application of a different rate of taxation to the assessed value.

8. This topic is discussed in greater detail in Sections III and IV. Essentially, the view is that agricultural land should be taxed differently because of the diversity and high risk involved in the industry, and because farmers have a relatively low income in relation to the large capital outlay for land that is required to make farming a profitable venture. Proponents of this view take the position that the ability to pay property taxes is a function of both land value and income since the value of the land is based on the potential income it can produce. *See infra* notes 130-36 & 161-64 and accompanying text.

resulted in the passage of laws and constitutional amendments that provide for a variety of methods of dealing with the taxation of agricultural property.[9] In Nebraska, this movement led to the passage, in 1972, of a constitutional amendment that allowed the legislature to provide for taxation of agricultural land based on its use value.[10] Subsequent to the passage of this amendment, the Nebraska legislature added statutory language providing for a "greenbelt" special tax assessment.[11] To qualify for this special assessment, land must be dedicated exclusively to an agricultural use[12] and also be located within an agricultural use zone.[13] The statutory scheme also provides a "rollback" provision to remove the tax benefit if the land is converted to non-agricultural use.[14] Use-value farmland assessment provisions, such as the one implemented in Nebraska, have generally proven effective in relieving urban fringe farmers of the tax burden that would result from the land's high market value based on its speculative developmental value.[15] These provisions, however, are thought to have little or no effect upon agricultural land located in primarily rural ar-

9. Most states provide a separate classification for agricultural land for tax purposes, whether it is accomplished constitutionally or de facto as it was in Nebraska. The scope of this Article does not include an indepth treatment of the different forms of, and consequences arising out of the various differential assessment methods. For a more expansive treatment, see Lapping, Bevins & Herbers, *Differential Assessment and Other Techniques to Preserve Missouri's Farmlands*, 42 MO. L. REV. 369 (1977); Comment, *Preferential Assessment of Agricultural Property in South Dakota*, 22 S.D.L. REV. 632 (1977) [hereinafter cited as Comment, *Preferential Assessment*]; Comment, *Assessment to Preserve Agricultural Land: With Application to the Four-State Region of Iowa, Kansas, Missouri and Nebraska*, 47 UMKC L. REV. 629 (1979) [hereinafter cited as Comment, *Assessment to Preserve Agricultural Land*]; Note, *supra* note 1.

10. NEB. CONST. art. VIII, § 1 provides: "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 . . . ."

11. NEB. REV. STAT. §§ 77-1343 to -1348 (Cum. Supp. 1984).

12. "Agricultural use shall mean the use of land for the purpose of obtaining profit by raising, harvesting, and selling crops . . . ." NEB. REV. STAT. § 77-1343 (Cum. Supp. 1984).

13. NEB. REV. STAT. § 77-1344(1) (Cum. Supp. 1984). An agricultural use zone is defined as "any land designated for agricultural use by any political subdivision" pursuant to relevant state law. NEB. REV. STAT. § 77-1343(2) (Cum. Supp. 1984).

14. NEB. REV. STAT. § 77-1348 (Cum. Supp. 1984). This section provides that when land that has received the special assessment becomes disqualified for such assessment, the amount that the taxes on the land would have been increased during the last five years, but for the special assessment, shall be added back to the taxes due on the land, together with interest from the dates such additional taxes would have been payable if no special assessment had been in effect. This amount is determined yearly. When the county assessor assesses the land at its agricultural use value, the assessor also enters a notation of potential additional tax liability until the land becomes disqualified for such assessment.

15. Lapping, Bevins & Herbers, *supra* note 9, at 382. *See also* Hansen & Schwartz,

eas where the market value is closer to the use-value for farmland not subject to developmental pressures.[16] Even so, these strictly rural farmers, as well as the "greenbelt" farmers, have received property tax relief.

In most states agricultural assessments are low in relation to other real estate assessments.[17] Despite our constitutional provision requiring uniformity of taxation,[18] for over 100 years the practice in Nebraska has been to undervalue agricultural land.[19] The undervaluation of farmland has not only served as a buffer, protecting the farmer from artificially high property taxes based on speculative land values and the fluctuations in the farm economy, it has also served to help preserve land for agricultural use.[20] Proponents of classification state that this de facto classification is necessary to help protect an industry that forms the basis for the economy of the State of Nebraska.[21] With the recent downturn in the farm economy, this practice of undervaluing agricultural land became more important to farmers. Faced with income losses due to poor weather conditions[22] and economic factors,[23] the lower rate of property taxation helped to keep many farmers afloat financially. For the struggling Nebraska farmers, however, the worst was yet to come.

Landowner Behavior at the Rural-Urban Fringe in Response to Preferential Property Taxation, 51 LAND. ECON. 341, 344 (1975).

16. Lapping, Bevins & Herbers, *supra* note 9, at 387.
17. *Id.* at 381. One reason behind this phenomenon is that as a matter of practice a great amount of agricultural property is assessed on a use-value or a modified use-value basis rather than a fair market value basis, regardless of whether or not a state has a differential assessment law.
18. *See supra* note 1.
19. *Aug. 16 Hearings on LB1, LB2, LR1 Before the Constitutional Revision and Recreation Comm.*, 88th Leg., Spec. Sess. 4-5 (1984) (statement of Nebraska Governor Robert Kerrey) [hereinafter cited as *Committee Hearing I*].
20. *See* Comment, *Preferential Assessment*, *supra* note 9, at 632; Comment, *Assessment to Preserve Agricultural Land*, *supra* note 9, at 629.
21. *See Committee Hearing I*, *supra* note 19, at 9-10 (statement of Robert Raun, Director of the Dep't. of Agriculture). In addition to products of agribusiness, farmers were responsible for paying over $254 million in taxes on farm and ranch property in 1981. The total contribution of agriculture and agribusiness to the Omaha economy in 1979 (according to a report of the Omaha Chamber of Commerce in 1982) was in excess of three and one-third billion dollars.
22. *See Committee Hearing I*, *supra* note 19, at 122-23 (statement of Bryce Neidig, President of the Nebraska Farm Bureau Fed'n). Weather risks include too much or too little precipitation, hail, strong winds, extremely high or low temperatures, and floods.
23. *Id.* at 122-23. Economic hardships have arisen from a growing federal deficit that has spawned high interest rates, government inspired grain boycotts, government intervention, and price fixing. One individual has noted that commodity prices are too low and that farmers do not have enough gross income to take care of the expenses that they incur. *See id.* at 11 (statement of Robert Raun, Director of the Dep't of Agriculture).

A recent Nebraska Supreme Court case, *Kearney Convention Center Inc. v. Buffalo County Board of Equalization*,[24] sent shock waves through the already beleaguered agricultural community. In *Kearney Convention Center*, the court held that the Nebraska Constitution does not permit the de facto classification of agricultural land that results from valuing farmland at lower levels than residential or commercial property for state taxation purposes. The court mandated that the Nebraska legislature no longer ignore the constitutional provision requiring uniformity within the state's property tax system. This decision has called into question the basic precepts underlying our present property tax system. In reaction to the significant increase in farmland valuation,[25] the unicameral placed a constitutional amendment on the November ballot that was subsequently passed by Nebraska voters, allowing the legislature, if it so desires, to separately classify agricultural land for property taxation purposes.[26]

The intent of this Article is to examine the court's decision in the *Kearney Convention Center* case and its implications. Section II will look at the facts surrounding the *Kearney Convention Center* controversy and the Nebraska Supreme Court's disposition of the case. Section III will analyze the court's decision, particularly in light of previous decisions, to determine whether the court's treatment of the case is consistent with precedent and the constitutional and statutory language involved. Finally, Section IV will examine the legislative response to the *Kearney Convention Center* decision, questioning the wisdom of creating further classifications in Nebraska's property tax system, and the ability of this amendment to deal with the underlying problems in the current property tax system. This Article will suggest possible alternative solutions and attempt to point out the difficulties the legislature will face in dealing with this new constitutional provision.

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24. 216 Neb. 292, 344 N.W.2d 620 (1984).

25. The full implication of the court's decision was that property valuations for agricultural land significantly increased when that decision was implemented by the State Tax Commissioner. New valuation guides provided by the State Department of Revenue show the valuations on agricultural land increasing by as much as 60 percent in some areas of the state. *Estimated Impact of 100 percent valuation by County, 1983*, 7 UNICAMERAL UPDATE, Sept. 14, 1984 at 8.

26. In a Special Session commencing August 16, 1984, the Nebraska unicameral advanced Legislative Resolution 7, Leg. Res. 7, 88th Leg. Spec. Sess. (1984), which placed on the ballot a proposed amendment to article VIII, section 1, of the Constitution of Nebraska stating that "[t]he Legislature may provide that agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation." Proponents of this amendment represented it as a way of preserving the "status quo." *Committee Hearing I, supra* note 19, at 122 (statement of Bryce Neidig, President of the Nebraska Farm Bureau Fed'n). The amendment was passed by Nebraska voters in the general election of November 6, 1984, by nearly a 2 to 1 margin. Omaha World Herald, Nov. 7, 1984, at 1, col. 5.

II. THE *KEARNEY CONVENTION CENTER* DECISION

A. The *Kearney Convention Center* Facts

The plaintiff, Kearney Convention Center, Inc. (hereinafter taxpayer), owned the Holiday Inn in Kearney, Buffalo County, Nebraska. An appraisal of all real and personal property in Buffalo County was conducted by the Buffalo County assessor's office for the taxable year 1981.[27] Two guides were to be used by the assessor in establishing property valuations.[28] The Marshall Valuation Service (hereinafter Marshall and Swift Manual) was to be used in appraising all building improvements,[29] and the Nebraska Agricultural Land Valuation Manual (hereinafter Land Manual) was to be used in appraising all agricultural land, including irrigated and dryland farm ground.[30]

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27. NEB. REV. STAT. § 77-1301(1) (1981) (the value of all real and personal property in the state that is subject to taxation is to be appraised every odd-numbered year, and that valuation is to be used as a basis of assessment and taxation until the next regular valuation). The statute has since been amended to provide for annual rather than biennial assessments. 1984 NEB. LAWS 773, codified at NEB. REV. STAT. § 77-1301(1) (Cum. Supp. 1984).

28. NEB. REV. STAT. § 77-1330(1) (1981) provides that "[t]he Tax Commissioner shall prepare, issue, and annually revise guides for county assessors . . . . County assessors shall continually use such guides in the performance of their duties. All appraisals or reappraisals of property for tax purposes shall be in compliance with such manuals and guides."

29. The valuation technique used in the Marshall and Swift Manual is cost of reproduction (Replacement Cost New) less depreciation. The Marshall and Swift Manual (published by the Marshall and Swift Publication Company) was first used in the taxable year 1981, with cost figures stated in current (1981) dollars. Prior to 1981, the county assessors had assessed building improvements based upon the cost figures supplied by the Nebraska Building Construction Manual prepared and issued by the Nebraska Tax Commissioner. The cost figures in the Nebraska Building Construction Manual had not been updated to account for inflation since 1976. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 294, 344 N.W.2d 620, 621 (1984).

30. The Land Manual uses a capitalization of earnings valuation technique that is based on yield production of various types of soil and the geographical location of the particular land. The Land Manual has been described as follows:

> The Land Valuation Manual was developed by the Department of Revenue after extensive research and is based generally on soil types and geographical locations. To be more explicit, agricultural land is classified as irrigated cropland, dryland cropland, rangeland and meadow, and pasture. These in turn are subclassified into valuation groups 1, 2, 3, and 4, based on the productivity of the particular soil, and, when necessary, are further subdivided. Finally, recognizing the decrease in rainfall and growing days when moving from the southeast corner of the state to the northwest corner, the state has been divided into seven land valuation areas. Each land classification and subclassification has a calculated per-acre dollar value, differing in each of the seven land valuation areas. In arriving at these valuations, information was obtained from various farm management companies, county agents, and others as to cash rent data, grazing fees, crop yield data, and share rental information in the various areas, and with that information, a net return to the landlord for

The 1981 Buffalo County assessment showed a substantial increase in the value of the taxpayer's improved property.[31] The taxpayer promptly filed a written protest with the defendant, Buffalo County Board of Equalization (hereinafter County Board),[32] requesting that the assessed value of its property be reduced because the improvements on the land had not been valued proportionately with other property in the county.[33] The taxpayer conceded that the actual value of its property was accurately determined,[34] but claimed that the actual value for all gradations of irrigated and dryland agricultural cropland in Buffalo County for the year 1981 were uniformly undervalued by the Buffalo County assessor.[35] The County Board, after evaluating the evidence, refused to lower the taxpayer's 1981 valuation.[36] The taxpayer then appealed to the District Court for Buffalo County,[37] but the court dismissed the petition on appeal and affirmed the action of the County Board.[38]

B. The *Kearney Convention Center* Opinion

The Nebraska Supreme Court reversed the decision of the District

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the various classes and subclasses was determined to which was applied a capitalization rate to arrive at a value.

Box Butte County v. State Bd. of Equalization & Assessment, 206 Neb. 696, 702-03, 295 N.W.2d 670, 676 (1980).

31. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 294, 344 N.W.2d 620, 621 (1984). The switch to the Marshall and Swift Manual in 1981 resulted in increased valuation of the improvements of the taxpayer's land from $2,072,730 to $3,332,065, an increase of approximately 53 percent.
32. *Id.* at 293, 344 N.W.2d at 621. NEB. REV. STAT. § 77-1504 (1981) provides: "In cases of evident error of assessment or of apparent gross injustice in overvaluation or undervaluation of real property, [the County Board] may consider and correct the same by raising . . . or by lowering the actual valuation of such real property."
33. NEB. CONST. art. VIII, § 1 ("Taxes shall be levied by valuation uniformly and proportionately upon all tangible property . . . .").
34. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 296-97, 344 N.W.2d 620, 622-23 (1984). The value of the taxpayer's property, as determined by the assessor in using the Marshall and Swift Manual, was essentially the same as the value determined by the taxpayer's expert in using other methods.
35. *Id.* at 299-300, 344 N.W.2d at 624. The 1980 Land Manual derived its cost figures by averaging the land sale figures over a five-year period (1975-1979). When compared with similar sales in Buffalo County for 1980 and 1981, the valuations contained in the Land Manual reflected only 44 percent of actual fair market value. Interview with James L. Koch, Appraiser, Property Tax Division, Department of Revenue, in Lincoln, Nebraska (Sept. 28, 1984).
36. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 293, 344 N.W.2d 620, 621 (1984).
37. NEB. REV. STAT. § 77-1510 (1981) ("Appeals may be taken from any action of the county board of equalization to the district court . . . .").
38. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 293, 344 N.W.2d 620, 621 (1984).

Court of Buffalo County.[39] The court noted the constitutional requirement of uniformity of taxation on all tangible property,[40] which must be valued and taxed[41] at "actual value."[42] The court stated that "it is permissible to reasonably classify property for tax purposes and to use different methods to determine assessed values for different classifications of property."[43] In doing so, however, "the results obtained by such permissible different methods must be in some way correlated so that the results reached shall be uniform and proportionate and shall not exceed actual value."[44] The court found that there was "absolutely no correlation shown between the assessed values set for property classified as farmland and property classified as improved real estate."[45] The court went further, stating that "dry cropland, irrigated cropland, and all real estate, whether improved or not, are all tangible property OF THE SAME CLASS for taxation purposes, as defined in our Constitution . . . ."[46] The court articulated that while the district court had correctly decided that the taxpayer's property was properly assessed at its actual value,[47] the district court had erred in determining that the value of the taxpayer's property has not been "unjustly and unfairly assessed in proportion to values assigned to all other property."[48]

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39. *Id.* at 292, 344 N.W.2d at 620. Judge Grant wrote for a unanimous court.
40. *Id.* at 302, 344 N.W.2d at 625. *See supra* note 1.
41. NEB. REV. STAT. § 77-201 (1981) provides: "All tangible property and real property in this state, not expressly exempt therefrom, shall be subject to taxation, and shall be valued at its actual value. Such actual value shall be taken and considered as the taxable value on which the levy shall be made."
42. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 300, 344 N.W.2d 620, 624 (1984). "Actual value" has been held many times to be synonymous with market value or fair market value. *See, e.g.*, Beynon Farm Prod. v. Board of Equalization, 213 Neb. 815, 816, 331 N.W.2d 531, 533 (1983); Hastings Building Co. v. Board of Equalization, 212 Neb. 847, 852, 326 N.W.2d 670, 673 (1982).
43. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 302, 344 N.W.2d 620, 625 (1984).
44. *Id.*
45. *Id. See supra* notes 34 & 35 and accompanying text.
46. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 303, 344 N.W.2d 620, 625 (1984) (emphasis added). This pronunciation by the court did not disrupt the present method of assessing property values. The court held that tangible property may be appropriately classified into logical subclassifications, as in the present case with farmland and improved real estate and that different, appropriate methods of determining values of such subclassifications may be utilized. But, following the court's earlier pronouncements, the results obtained as values for the various subclassifications of property "must be correlated so that *all* tangible property shall be assessed uniformly and proportionately." *Id.* at 303, 344 N.W.2d at 625-26 (emphasis in original).
47. *Id.* at 303, 344 N.W.2d at 626.
48. *Id.* The court found that the evidence presented supported a finding that farmland in Buffalo County was assessed at only 44 percent of its actual value, while the taxpayer's improved real property was assessed at its actual value.

The court then turned to the principle set out in *Sioux City Bridge v. Dakota County*,[49] that "the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute."[50] The court remanded the case to the district court of Buffalo County to have the actual value of the taxpayer's property reduced to 44 percent of that value, in order to equalize the value of the taxpayer's property with that of other property in Buffalo County, as required by the constitution and the statutes of the State of Nebraska.[51]

III. ANALYSIS

The decision in *Kearney Convention Center* suggests a clear, unanimous intention to breathe new life and meaning into a constitutional provision that had been ignored and abused for well over a century. The distinguishing feature of the decision is the court's first clear enunciation of the principle that all agricultural land and all real estate, whether improved or not, are all tangible property[52] of the same class for taxation purposes, and must therefore be valued uniformly[53]

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49. 260 U.S. 441 (1923).

50. *Id.* at 446. *See also* Konicek v. Board of Equalization, 212 Neb. 648, 650, 324 N.W.2d 815, 817 (1982) ("A landowner is entitled to have his property assessed uniformly and proportionately with other property, even though the result may be that it is assessed at less than actual value.").

51. Kearney Conention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The decision of the District Court of Buffalo County would deny the injured taxpayer any remedy at all, since it would be impossible for it to secure an increase in the assessment of the great mass of underassessed property in the taxing district. The court followed the principle that "where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 446 (1923).

52. Tangible property is defined as "[t]hat which may be felt or touched, and is necessarily corporeal, although it may be either real or personal." BLACK'S LAW DICTIONARY 1306 (5th ed. 1979). This appears to be the definition applied by the court in interpreting Nebraska constitutional language. The Nebraska statutes apply a more restrictive definition of tangible property. NEB. REV. STAT. § 77-105 (1981), defines tangible property as: "[A]ll *personal property* possessing a physical existence . . . ." (emphasis added). Personal property is deemed to include: "[a]ll property other than real property and franchises." NEB. REV. STAT. § 77-104 (1981). This creates an incongruent situation where farmland is tangible property under the constitution, but is not tangible property as defined by the statutes. This discrepancy appears to be taken care of in NEB. REV. STAT. § 77-201 (1981), which applies the taxing scheme to both real and tangible property. *See supra* note 41.

53. "The burdens of taxation, to be uniform, must have the essential of equality, and must bear alike upon all the property within the limits of the unit wherein it is lawful to levy taxes for a purpose, whether that unit be the state, county, or a

and proportionately[54] under the constitution.[55]

A. The Legal Principles Involved

The constitutional rule of uniformity applies to both the rate of taxation and the valuation of property for tax-raising purposes.[56] This provision of the Nebraska Consitution was interpreted by the United States Supreme Court in *Sioux City Bridge Co. v. Dakota County*,[57] where it was held that a failure to provide uniform taxation under that provision would be a violation of the fourteenth amendment[58] to the United States Constitution.[59] The subjectivity that enters into the valuation process,[60] and the complexity of the taxation system,[61] however, often make perfect uniformity difficult to achieve. The Nebraska Supreme Court has recognized that absolute or perfect equality and uniformity in taxation cannot be obtained[62] and is not always necessary to satisfy the requirements of the equal protection clause.[63]

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municipality." BLACK'S LAW DICTIONARY 1373 (5th ed. 1979). In terms of classification, a tax is uniform when it operates without distinction or discrimination upon all persons within a class. Uniformity implies equality in the burden of taxation and must be extended to all property that is subject to taxation, so that all property may be taxed alike and equally. *Id.*

54. "Taxes are 'proportional' when the proportion paid by each taxpayer bears the same ratio to the amount to be raised that the value of his property bears to the total taxable value . . . ." *Id.* at 1308.

55. *See supra* note 1.

56. Grainger Bros. Co. v. County Bd. of Equalization, 180 Neb. 571, 574, 144 N.W.2d 161, 164 (1966).

57. 260 U.S. 441 (1923).

58. The equal protection clause of the U.S. CONST. amend. XIV, § 1 provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

59. In applying the fourteenth amendment to the uniformity provision, the Court noted that:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.

Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1923) (quoting Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 352-53 (1918)).

60. *See infra* notes 133-46 and accompanying text.

61. *See infra* notes 181-84 and accompanying text.

62. Grainger Bros. Co. v. County Bd. of Equalization, 180 Neb. 571, 585, 144 N.W.2d 161, 170 (1966) ("perfect uniformity of taxation is a dream unrealized and exact uniformity or mathematical accuracy in valuations are impossible").

63. *See* Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 447 (1923). The Court

"Substantial compliance with the requirement of equalization and uniformity of taxation is all that can be required . . . ."[64] The objective of constitutional uniformity in the taxation of tangible property is accomplished if all of the property within the local taxing district is assessed at a uniform standard of value and taxed at a uniform rate.[65]

The uniform standard of value mandated by the legislature is "actual value."[66] While actual value has been held to mean the same thing as fair market value,[67] there are seven elements that may be used in a formula to determine actual value.[68] Those factors are: (1) earning capacity of the property; (2) relative location; (3) desirability and functional use; (4) reproduction cost less depreciation; (5) comparison with other properties of known or recognized value; (6) market value in the ordinary course of trade; and (7) existing zoning of the property. The Land Manual is primarily concerned with the earning capacity of the property,[69] whereas the Marshall and Swift Manual uses the reproduction cost less depreciation formula.[70] The Nebraska Supreme Court has approved the use of different methods of valuation for different types of property in the same class,[71] so long as the different methods are applied correctly, and uniformity in value results.[72] The constitutional mandate is that there be some correlation between the different permissible methods so that the results are uniform and proportionate and do not exceed actual value.[73]

The Nebraska Supreme Court has set down a formula to be used in

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held that mere errors of judgment in valuation will not support a claim of discrimination. The challenging taxpayer must show something that in effect amounts to an intentional violation of the principle of practical uniformity.

64. Riha Farms, Inc. v. Sarpy County, 212 Neb. 385, 390, 322 N.W.2d 797, 801 (1982).
65. Gage County v. State Bd. of Equalization and Assessment, 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970).
66. *See supra* note 41.
67. *See supra* note 42.
68. NEB. REV. STAT. § 77-112 (1981). The items set out in the statute as examples of actual value are not exclusive. Many elements enter into a determination of actual value, only some of which are set out in the statute. Gradoville v. Board of Equalization, 207 Neb. 615, 617, 301 N.W.2d 62, 64 (1981).
69. *See supra* note 30.
70. *See supra* note 29.
71. In considering the unique nature of farmland and other real estate, the court approved the use of the Land Manual and the Marshall and Swift Manual, stating that there was ample justification for the utilization of different methods of equalization in what are logically distinguishable kinds of property. Box Butte County v. State Bd. of Equalization and Assessment, 206 Neb. 696, 711, 295 N.W.2d 670, 680 (1980).
72. The question is whether the method used ultimately attains a reasonable degree of uniformity in value. Lincoln Tel. & Tel. Co. v. County Bd. of Equalization, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981).
73. Kearney Convention Center v. Buffalo County Bd. of Equalization, 216 Neb. 292, 302, 344 N.W2d 620, 625 (1984). Essentially, the requirement of a correlation between the methods mandates that whatever method or formula for valuation is

determining whether an actionable case of disproportionate valuation has occurred. In order to establish disproportionate taxation, the taxpayer is required to prove: (1) the percentage of actual value at which its own property was assessed; and, (2) that other property in the same class is undervalued.[74] Furthermore, in order for a taxpayer to successfully challenge a discrepancy in valuations within a taxing district, it must be shown that the assessment is grossly excessive and results from arbitrary or unlawful action, and is not a mere error of judgment.[75] The court has noted on many occasions that the burden of proof is on the challenging taxpayer to prove that the action of the board of equalization was erroneous, arbitrary, capricious, and contrary to law.[76] There is a presumption that the board of equalization has faithfully performed its official duties.[77] This presumption of the validity of the board's action disappears when there is competent evidence to the contrary, and from that point on, the question of the reasonableness of the valuation becomes one of fact, to be decided on the evidence alone.[78]

Once the taxpayer has established that the value of its property has not been fairly and proportionately equalized with other property, resulting in a discriminatory, unjust, and unfair assessment, the remedy to be provided by the court is a reduction of the valuation of the aggrieved taxpayer's property to the percentage of value at which others' property is taxed.[79] The court has held that this remedy is proper even if it is a departure from the statutory requirement of valuation at

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used, the end result must be a reasonable approximation of the fair market value of that property.

74. Lincoln Tel. & Tel. Co. v. County Bd. of Equalization, 209 Neb. 465, 472, 308 N.W.2d 515, 520 (1981).

75. "The valuation of property is largely a matter of judgment, but mere differences of opinion, honestly entertained, though erroneous, will not warrant the interference of the courts." Newman v. County of Dawson, 167 Neb. 666, 672-73, 94 N.W.2d 47, 51 (1959). The court went on to note that if uniformity of opinion were required, no assessment could ever be sustained. *Id.*

76. Box Butte County v. State Bd. of Equalization, 206 Neb. 696, 709, 295 N.W.2d 670, 679 (1980). The burden of proof remains on the challenging taxpayer even when the presumption that the board of equalization has faithfully performed its official duties disappears. *See* Gradoville v. Board of Equalization, 207 Neb. 615, 618, 301 N.W.2d 62, 64 (1981); Weller v. Valley County, 141 Neb. 69, 73, 2 N.W.2d 606, 608-09 (1942).

77. Gradoville v. Board of Equalization, 207 Neb. 615, 618-19, 301 N.W.2d 62, 64 (1981).

78. *Id.* The court's language seems to indicate that the mere presence of competent evidence to the contrary is enough to destroy the presumption of the assessment's validity. It would seem logical, however, that if a board of equalization could present competent rebutting evidence to support its side, the presumption would remain intact. The presence of competent evidence supporting both sides would create a situation where the court would most likely view the discrepancy in valuation as a mere difference of opinion.

79. Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 446 (1923).

actual value.[80] This conclusion is based on the principle that where it is impossible to secure both the standards of the true value for all tangible property in the local taxing district, and the uniformity and equality required by law,[81] the latter requirement is to be preferred as the just and ultimate purpose of the law.[82]

B. The Prior Case Law

The issues presented in *Kearney Convention Center* are similar to those raised in two prior Nebraska Supreme Court cases dealing with the constitutional provision of uniformity of taxation. In *Grainger Brothers Company v. County Board of Equalization*,[83] the plaintiff was in the business of providing dry groceries and perishables to retail grocery customers. For the tax years 1959 through 1962, the county assessor assessed the value of the Grainger Brothers Company's inventory at its actual value.[84] Grainger Brothers Company objected to the tax obligation imposed by the county assessor by contending that a great portion of the tangible property[85] in the county was systematically assessed at far less than its actual value, thus violating the constitutional principle of uniform taxation. To support its claim, Grainger

80. *Id.* *See also* Beynon Farm Prod. Co. v. Board of Equalization, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983) ("A landowner is entitled to have his property assessed uniformly and proportionately with other property even though the result may be that it is assessed at less than actual value.").

81. The courts have recognized that obtaining both standards in a judicial proceeding is impossible. In Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923), the bridge company's property was assessed at actual value while all other real estate in the county was valued at 55 percent. The Nebraska Supreme Court held that the bridge company had no remedy except to have the value of the property that was assessed below its true value raised rather than to have the value of property assessed at its true value reduced. On appeal, the Supreme Court noted that this would create a dilemma where one or a few of a class of taxpayers are assessed at 100 percent and the rest of the class are intentionally assessed at a much lower percentage in violation of the law. The Court refused to uphold the decision of the Nebraska Supreme Court, noting that to do so would be to deny the injured taxpayer any remedy at all because it would be utterly impossible for him to secure, by any judicial proceeding, an increase in the assessment of the great mass of underassessed property in the taxing district. Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445-46 (1923).

82. *Id.* at 446. Since the taxpayer cannot compel an increase in the valuations of all the underassessed property, his only chance for uniformity and equality of taxation is through a reduction of his own assessment. To deny this would be to uphold a violation of the fourteenth amendment. *See supra* note 59.

83. 180 Neb. 571, 144 N.W.2d 161 (1966).

84. It was conceded by Grainger Bros. Co. that the fair market value of its inventory for the respective years was practically identical with that fixed by the county assessor. *Id.* at 573-74, 144 N.W.2d at 164.

85. The great proportion of the tangible property referred to by Grainger Bros. Co. as being systematically undervalued was real estate in the county. *Id.* at 573-74, 144 N.W.2d at 164.

Brothers Company produced an expert witness who testified that the county assessor had, for the years in question, systematically undervalued real estate in the county at a valuation equal to approximately 24 percent of its actual value.[86] Finding that Grainger Brothers Company had proven that the value of their property had not been fairly and proportionately equalized[87] with other property,[88] the court held that the failure to fairly and proportionately equalize the valuation of the inventory in relation to the real estate resulted in discriminatory, unjust and unfair assessments.[89] In accordance with established legal principles, Grainger Brothers Company was awarded relief, having its assessment reduced to the percentage of that value at which the real estate in the county had been taxed.[90]

The Nebraska Supreme Court decision that foreshadowed the result in *Kearney Convention Center* came down less than two years earlier in *Konicek v. Board of Equalization*.[91] In *Konicek*, the plaintiff had sought a valuation reduction because improvements on his land had been valued disproportionately with unimproved farmland. The record before the court showed that, for purposes of taxation, land and improvements were valued separately in the county.[92] Konicek's expert witness testified that unimproved farmland was valued at approximately 20 percent of actual value while improvements

86. *Id.* at 579-81, 144 N.W.2d at 168. It was conceded that during the years 1952 to 1962, improvements and new, as well as current, construction on real estate were intentionally appraised using the values contained in a 1952 cost guide book, despite the fact that real estate after 1958 was steadily rising in value. *Id.* at 577, 144 N.W.2d at 164-68. This is similar to the facts in *Kearney Convention Center*, in which the court found that the Land Manual utilized 1976 dollar values in the assessment of agricultural land for the tax year 1981. *See supra* note 35.

87. The presumption as to the validity of the official assessment apparently vanished when the county board failed to present competent evidence to justify the use of the 1952 guide and to dispute the statistics presented by Grainger Bros. Co.'s expert witness. *See supra* notes 76 & 78.

88. The court held that under the Nebraska Constitution, "business inventories and real estate are in the same class [tangible property] for taxation purposes . . . ." Grainger Bros. Co. v. County Bd. of Equalization, 180 Neb. 571, 582, 144 N.W.2d 161, 168 (1966).

89. *Id.* at 583, 144 N.W.2d at 169-70. The court noted that the undervaluation of real estate was done designedly and systematically for the purpose of equalizing real estate values. While the plan established uniformity and equality in the valuation of real estate for taxation, it perpetuated a systematic and unlawful discrimination when compared with the valuation of *all* tangible property that also included inventories of merchandise that were valued for taxation at actual value.

90. *See supra* notes 50-51 and accompanying text.

91. 212 Neb. 648, 324 N.W.2d 815 (1982).

92. *Id.* at 649, 324 N.W.2d at 816. Farmland was valued in accordance with the Land Manual, and improvements to the land were valued in accordance with a separate manual (the predecessor to the Marshall and Swift Manual, *see supra* note 29) promulgated by the State Tax Commissioner.

on farmland were valued at approximately actual value.[93] When these values were combined to arrive at the valuation of improved farmland, improved farmland was assessed at a higher percentage of actual value than unimproved farmland.[94] The court held that the effect of this system was to create separate classifications of unimproved farmland and improved farmland with no correlation between the classifications.[95] Since one class was assessed at a higher percentage of actual value than the other, and the property in both classes is considered tangible property under the Nebraska Constitution, this method of assessment was not permissible under the constitutional requirement that all tangible property be valued uniformly and proportionately.[96] The court noted that this discrepancy was not the result of an error of judgment, but was a deliberate and intentional discrimination applied systematically throughout the county.[97] It thus ordered that the value of Konicek's property be reduced to that level of valuation at which unimproved farmland was taxed.[98]

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93. Konicek v. Board of Equalization, 212 Neb. 648, 649, 324 N.W.2d 815, 816 (1982).

94. *Id.* For example, if you have two similar pieces of farmland, both appraised at $25,000 when in reality the true value of each is $100,000, you achieve uniformity because both are assessed at the same percentage of actual value: 25 percent. However, if one of the farms has improvements on it totalling $50,000, which are assessed at actual value, that farm is now appraised at $75,000 when its true value is $150,000. Thus, the unimproved farmland is assessed at 25 percent of actual value, while the improved farmland is now assessed at 50 percent of actual value.

95. *Id.* The court has held that it is permissible to reasonably classify property for tax purposes. *See infra* note 127. However, unless mandated by the Nebraska Constitution, these different property classifications are not separate and independent constitutional classifications, but merely legislatively mandated subclassifications of the overall class of tangible property. Therefore, there must be a correlation between the classifications. For there to be a correlation between the classifications, there must be evidence presented to show that the creation of the classifications furthered the goal of assuring that all tangible property is assessed at its actual or fair market value. *See supra* note 73.

96. Konicek v. Board of Equalization, 212 Neb. 648, 650, 324 N.W.2d 815, 816 (1982).

97. *Id.* The court did not clearly state the basis of this finding of fact. The court seemed to imply that opinion evidence is sufficient to show proof of improper valuation if such evidence is not rebutted by other testimony. Konicek had introduced evidence of the valuations of only three other properties within the county. To reach its decision, the court had to assume that the factual situation as shown by the evidence was typical of the situation in the county generally. Judge Clinton dissented in *Konicek*, criticizing the majority opinion for relying solely upon the statement of the county assessor that improvements on real estate are valued at about market value and rural lands are valued below market value to establish disproportionate valuation generally. Judge Clinton noted that in his opinion, the logic by which the court reached its conclusion was without flaw, but he felt that the majority relied on some factual assumptions not shown on the record in order to reach its conclusion. *Id.* at 651-54, 324 N.W.2d at 817-19 (Clinton, J., dissenting).

98. *Id.* at 650, 324 N.W.2d at 817. Relief was granted even though Konicek's property was already assessed at less than actual value prior to the lawsuit.

If there was any question about the implication this decision held for urban and rural valuations, it was laid to rest by Judge Clinton's dissent in *Konicek*. While examining the legal issues presented, Judge Clinton noted that under the Nebraska Constitution, farm real estate is not a separate class of property for purposes of taxation.[99] The dissent essentially predicted the outcome of *Kearney Convention Center* by noting that the method of valuation used in *Konicek* would lead to a disproportionate valuation between urban and rural property.[100] In a little over a year, the Nebraska Supreme Court would unanimously affirm Judge Clinton's suspicions.[101]

C. The Nebraska Supreme Court's Treatment of the Facts and Legal Principles

The principle question facing the court in *Kearney Convention Center* was whether assessment according to the Land Manual, as it was used in that case, was a method that ultimately attained a reasonable degree of uniformity in value in relation to other taxable property, as required by the state and federal constitutions.[102] The county assessor testified that from his point of view, the assessment figures for agricultural land, as determined by the strict application of the Land Manual, were the amounts to be used as assessed value.[103] No other element was used to calculate that number.[104]

Subsequent to the court's decision in *Konicek*, but prior to the deci-

99. *Id.* at 655, 324 N.W.2d at 819 (Clinton, J., dissenting). The dissent stated that farm real estate, real estate located in cities and villages, and other forms of tangible personal property, except as authorized by the Nebraska constitution, is of the same class for valuation and taxation.

100. *Id.* at 655-56, 324 N.W.2d at 819 (Clinton, J., dissenting). Judge Clinton noted that it is a notorious and widely known fact that urban property improvements are usually a much higher percentage of the value of the real estate than are property improvements in the case of a farm. Considering this fact in light of the method of valuation applied in *Konicek*, it seems to follow that urban real estate is taxed at a proportionately higher valuation than farm real estate.

101. Ironically, Judge Clinton was no longer on the court at the time *Kearney Convention Center* came before it for consideration.

102. Use of the Marshall and Swift Manual was not in dispute. The taxpayer agreed that the fair market value of its property as determined by the assessor when applying the Marshall and Swift Manual was essentially the same as the value determined by the taxpayer's expert using other methods.

103. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 297, 344 N.W.2d 620, 623 (1984).

104. It appears that the language of NEB. REV. STAT. § 77-1330 (1981), *see supra* note 28, does not clearly require rigid adherence to the values set forth in the manuals. The Nebraska Attorney General has stated a belief that while the statute requires county assessors to "use such guides" in the performance of their duties, these words fall short of forbidding any departure from the manuals, if variations from the values set in the manuals are necessary because of individual peculiarities of a particular parcel of real estate. The Attorney General did note, however, that the legislature intended that the manuals be given great weight, and that

sion in *Kearney Convention Center*, the court upheld the use of the Land Manual in *Beynon Farm Products v. Board of Equalization*.[105] In *Beynon*, the court reiterated that authorities charged with the duty of valuing property for taxation are not limited to any single method of determining value, and should consider such relevant facts as result in a proper assessment.[106] In the absence of contrary evidence, proof that the guidelines provided by the tax commissioner were applied correctly raises a presumption that the assessment was proper.[107] Following this established principle, the court in *Kearney Convention Center* correctly started its analysis with a presumption that the assessed valuation of all farmland was proper. The court held, however, that the presumption of propriety raised by the county assessor's sole reliance on the state-furnished Land Manual disappered when the taxpayer went forward with its evidence. The taxpayer showed that the Land Manual, using 1976 dollars, resulted in valuations that reflected only 44 percent of actual or fair market value.[108] This evidence went unrebutted by the Board of Equalization.[109] The taxpayer's expert testified that the reason for this discrepancy was " 'That in his opinion, based on a review of comparative sales in Buffalo County for 1980 and 1981, the valuations contained in the Nebraska Agricultural Land Valuation Manual for the year 1981 [did] not account for the impact of inflation on the fair market—actual value of rural irrigated and dryland agricultural cropland.' "[110] The taxpayer's expert also testified that his training, experience, and review of his 1980 and 1981 appraisals of farmland in Buffalo County, led him to believe that the actual value for all gradations of irrigated and dryland agricultural cropland for the year 1981 were uniformly undervalued by the county assessor by a multiplication factor of 2.25.[111] In addition to this testimony, the court was also faced with the acknowledged fact that the Marshall and Swift manual valuations were premised on 1981 dol-

departures from the manual be the exception, and not the rule. Appraisal Manuals, 1979-80 Op. Neb. Att'y Gen. 427, 428-29.

105. 213 Neb. 815, 331 N.W.2d 531 (1983). The court noted that all things, except constitutionally valid property tax laws, are no more than guidelines to be employed in arriving at an ultimate assessment that meets first the constitutional requirement that property be taxed uniformly and proportionately, and second, the statutory requirement that the amount of assessment does not exceed actual value. *Id.* at 819, 331 N.W.2d at 534.

106. *Id.*

107. *Id.*

108. *Id.* at 301, 344 N.W.2d at 624.

109. *Id.* at 301, 344 N.W.2d at 624. The court noted that nowhere in the facts before the court was there any testimony that the valuations resulting from the use of the Land Manual were "actual value." *Id.* at 297, 344 N.W.2d at 623.

110. *Id.* at 299-300, 344 N.W.2d at 624 (quoting plaintiff expert Robert D. Eckwert).

111. *Id.* at 299, 344 N.W.2d at 624. Application of this multiplication factor to the true fair market value would result in the uniform undervaluation of farmland at 44 percent of its actual value.

lars,[112] and that the Land Manual valuations were based on 1976 dollars.[113] The court considered this in light of the fact that there was no evidence of any attempt to correlate the different methods of valuation.[114] Following the precedent set in *Konicek*,[115] the court held that the discrepancy was not the result of an error of judgment on the part of the county assessor, but was instead a deliberate and intentional discrimination systematically applied throughout the county.[116]

One of the most damaging pieces of evidence came not from the taxpayer, but from members of the Nebraska legislature as amici curiae.[117] In their brief, these legislators introduced a 1982 assessment/sales ratio study[118] prepared by the Nebraska Department of Revenue that demonstrated that the discrepancy in valuation was a deliberate and intentional discrimination systematically applied throughout the state.[119] On a state-wide basis, the study indicated that residential

112. *See supra* note 29.

113. *See supra* note 35.

114. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 300, 344 N.W.2d 620, 624 (1984). The court did not state what nature of evidence would have been sufficient to show a correlation between the methods, but it appears that if the county assessor had used the Land Manual, and then applied a multiplication factor in an attempt to update the manual to reflect 1981 dollar values and to account for inflation, the court would find that a correlation had been attempted. *See generally* Box Butte County v. State Bd. of Equalization and Assessment, 206 Neb. 696, 295 N.W.2d 670 (1980) (evidence in the record, showing an attempt to update the 1976 Land Manual by applying a plus 20 percent factor to update it to 1979, was sufficient for the State Board of Equalization to conclude that the Land Manual approach established reasonably accurate valuations of farmland).

115. *See supra* text and accompanying notes 96-97.

116. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 300, 344 N.W.2d 620, 624 (1984).

117. Several members of the Nebraska legislature submitted a brief as amici curiae on behalf of the taxpayer. Their brief petitioned the court to grant the taxpayer relief and to declare the Land Manual unconstitutional as applied. *See* Brief for the Amici Curiae at 1-15, Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 344 N.W.2d 620 (1984) [hereinafter cited as Amicus Brief].

118. The Nebraska Supreme Court has upheld the use of reasonably reliable assessment sales ratios. Gage County v. State Bd. of Equalization & Assessment, 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970). An assessment/sales ratio attempts to examine mathematically all real property sales each year in each county. Sales are grouped into three major categories: residential, commercial and industrial, and agricultural. Each main category has two subheadings, either improved or unimproved. The actual sale price of a specific piece of property is compared to its assessed value and is expressed as a percentage. The closer the resulting ratio is to 100 percent, the more nearly it approaches the uniformity of assessment required by law. NEBRASKA TAX RESEARCH COUNCIL, NTRC DISCUSSION PAPER - CLASSIFICATION OF PROPERTY, PART II (Feb. 3, 1984) [hereinafter cited as DISCUSSION PAPER II].

119. The legislators felt that the fact that agricultural land is intentionally undervalued in relation to other real property is so widely known and acknowledged that

property is valued at 82.91 percent of market value, commercial and industrial property at 95.22 percent, improved agricultural land at 50.04 percent, and unimproved agricultural land at 41.91 percent.[120] It was also noted by the legislators that the figures shown for agricultural land in Buffalo County were virtually identical to the figures supplied by the taxpayer's expert witness for agricultural land in Buffalo County.[121] While the court has approved the use of the seven statutory elements to establish a formula to arrive at valuation,[122] that formula should be derived so as to reflect actual value. When nonformula valuation methods yield significantly different results than the formula, there is conclusive evidence that the formula or the application of the formula is in error.[123]

In *Kearney Convention Center*, the taxpayer's expert witness provided one method of checking the validity of the formula utilized in the Land Manual,[124] and the assessment/sales ratio study prepared by the Nebraska Department of Revenue provided another.[125] Both nonformula methods indicated that the Land Manual, as applied in Buffalo County, only reflected approximately 44 percent of the actual fair market value of agricultural land located within the county.[126] The court, in disposing of the case, did not rule out future use of the Land Manual, but clarified that use of the Land Manual must result in valuations that reasonably reflect the actual fair market value of the assessed property.[127] Faced with such damaging uncontested evidence of the discrepancy resulting from the application of the Land Manual to property valuations in Buffalo County for the tax year 1981, the court had little choice in *Kearney Convention Center* but to find that uniformity of taxation did not exist. Accordingly, it ordered that the valuation on the taxpayer's property be reduced to 44 percent, the

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the court could take judicial notice of that fact. Amicus Brief, *supra* note 117, at 5.

120. *Id.* at 5-6.

121. *Id.* at 6.

122. *See supra* notes 68-73 and accompanying text.

123. Amicus Brief, *supra* note 117, at 9. The legislators suggested use of such other nonformula valuation methods as benchmark appraisals and assessment/sales ratio studies.

124. *See supra* note 102.

125. *See supra* note 118.

126. *See supra* note 48.

127. Kearney Convention Center, Inc. v. Buffalo County Bd. of Equalization, 216 Neb. 292, 302, 344 N.W.2d 620, 625 (1984). In essence, the court has said that it is proper to value farmland by a capitalization of earnings approach to take into account the income producing capability of farmland, but in the end that valuation method must reach a valuation that reflects the fair market value of that property as income-producing farmland. Under the court's reasoning, this invariably leads back to a consideration of the market place for farmland as evidenced by comparable sales.

level of valuation at which farmland[128] in Buffalo County was assessed and taxed.[129]

The principal criticism of the court's analysis in *Kearney Convention Center* is that actual or fair market value may not always be a valid indicator of the true value of land used for agricultural purposes.[130] Several factors that render agricultural land unique have been pointed out as indicators that sales of agricultural land are not good indicators of value. First, agricultural land is a limited, nonwasting asset that cannot be expanded, manufactured, or reproduced.[131] This causes an artificial supply and demand situation that negates market value as a sole, equitable base for value.[132] Furthermore, since land is often owned by nonfarm and foreign government investors, the inflated value of agricultural land has been exaggerated even further.[133] Second, it is noted that the income stream cannot be predicted, graphed, or discounted in any conventional manner so as to arrive accurately at probable value over a period of years.[134] It has been suggested that the primary reason for this uncertainty is that farmers have little or no imput or control over the price given for their product.[135] Finally, it is argued that since agricultural land is a production asset rather than a consumption asset, value should relate directly to what the land can earn.[136]

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128. *See supra* notes 52-55 and accompanying text.

129. *See supra* notes 79-82 and accompanying text.

130. *Committee Hearing I, supra* note 19, at 123 (statement of Bryce Neidig, President of the Nebraska Farm Bureau Fed'n).

131. *Aug. 27 Hearings on LB1, LB2, and LR1 Before the Constitutional Revision and Recreation Comm.*, 88th Leg., Spec. Sess., 79 (1984) (statement of Janet Edwards, Howard County Assessor) [hereinafter cited as *Committee Hearing II*].

132. *Id.* Both county representatives and the Department of Revenue have noted that sales are a poor indicator of actual value of farmland. This is a result of the fact that practically all farm sales are made to adjoining owners who are anxious to take advantage of rare, once-in-a-lifetime opportunities to enlarge their existing farms or ranches. This often creates an artificially high market price that often exceeds the property's true values as income producing assets. *See* Box Butte County v. State Bd. of Equalization & Assessment, 206 Neb. 696, 710, 295 N.W.2d 670, 679 (1980).

133. *Committee Hearing II, supra* note 131, at 79 (statement of Janet Edwards, Howard County Assessor). It has been asserted that the trouble with the market value of farm property is that for many years its valuation has been based on not only its ability to produce an income, but also on its ability to protect farmland investors against inflation. Accordingly, it is felt that farmland should be valued according to its ability to produce an income, and not on its ability to protect against inflation or its potential for future production and profitmaking ability. *Committee Hearing I, supra* note 19, at 13-14 (statement of Robert Raun, Director of the Dep't of Agriculture).

134. *Committee Hearing II, supra* note 131, at 79 (statement of Jane Edwards, Howard County Assessor).

135. *Id.* at 79-80.

136. *Committee Hearing I, supra* note 19, at 147 (statement of Dick Mercer, President of the Nebraska Livestock Feeders Ass'n).

In approving the use of the Land Manual in *Box Butte County*, the court took notice of testimony that earning capacity is probably the only common denominator available in the analysis of rural sales.[137] Because of the unique nature of farmland as a production asset, the court approved the use of an earning capacity formula for valuing farmland. The court noted the need for different methods of valuation for what the court considered to be "logically distinguished kinds of property."[138] One principal question remains: of what value is the ability to assess property on its earning capacity, when that valuation can be declared invalid for not reflecting fair market value as evidenced by comparable sales studies and assessment/sales ratio studies, studies that the court in *Box Butte County* only four years earlier had said were not always accurate reflections of the actual value of farmland?

This issue of valuation was left substantially unanswered by the court in *Kearney Convention Center*. Because the defendant failed to provide any evidence to refute the validity of the assessment/sales ratios, or to assert that the Land Manual values reflected actual value as income producing farmland, it is unclear to what extent true earning capacity was reflected in either method of valuation.[139] Thus, it is unclear whether the probative value given to the assessment/sales ratios in *Kearney Convention Center* effectively rendered meaningless the ability to value farmland according to earning capacity,[140] or whether a lower earning capacity valuation would have been upheld had the discrepancy not appeared to be the result of intentional undervaluation.[141] Given that the court has recognized that absolute or perfect

137. Box Butte County v. State Bd. of Equalization & Assessment, 206 Neb. 696, 710, 295 N.W.2d 670, 679-80 (1980). Herbert Kollmorgen, the graduate soil scientist, agronomist, and conservationist primarily responsible for the 1976 Land Manual, also testified that "utilization of the income capitalization approach was about the only way that 'you can actually get real equalization.' " *Id.* at 710-11, 295 N.W.2d at 680.

138. *Id.* at 711, 295 N.W.2d at 680.

139. The county board failed to show that the land sales used by the taxpayer's expert witness were greatly inflated above the price the farmland would have brought in a sale based on its earning capacity. Similarly, the county board also failed to demonstrate that the Land Manual, using 1976 dollar values in its 1981 assessments, did not underassess the farmland below its actual market value as an income producing asset.

140. If the Land Manual values applied in *Kearney Convention Center* reflected a true earning capacity valuation, and were rejected by the court in favor of the assessment sales ratio, then the ability to use different methods to value property would serve no purpose since the ultimate test of fair market value would be the valuations derived from land sales data.

141. Had the discrepancy between the Land Manual values and the assessment/sales ratio values been less glaring, the court might have approved the lower valuations resulting from the application of the Land Manual, holding them to be mere differences of opinion or errors in judgment. *See supra* note 75.

equality and uniformity in taxation is unobtainable,[142] it appears likely that a lower earning capacity valuation would be upheld if it bore some reasonable relation to the assessment/sales ratio valuations.[143] This does not invalidate the use of earning capacity in establishing the value of farmland, but it does limit its effectiveness somewhat by requiring a reasonable correlation between the Land Manual value and sales figures for farmland within the taxing district,[144] even though sales may not be an accurate measure of the true value of the land as agricultural land.[145] Given the definition of fair market value,[146] the court appeared to have little choice but to apply a fair market standard based on sales as a check to measure the uniformity and proportionality of taxation achieved by other methods of valuation.[147]

IV. RAMIFICATIONS

A. The Impact of *Kearney Convention Center*

In terms of the legal issues involved, *Kearney Convention Center* is not a landmark case. The court's decision was based upon the particular evidence, or lack of evidence, in the record before the court and thus is "of limited precedential value."[148] In essence, the *Kearney Convention Center* decision did not break any new legal ground, but merely applied the general constitutional requirement that taxes be levied by valuation uniformly and proportionately upon all tangible property. As such, the court's decision should have been little more than a footnote in legal history. The problem, however, was that the valuation levels for the main classifications of property in Buffalo County were representative of the valuation levels across the state.[149] Sensing that the court would continue to strike down such discrepancies in property values, and seeking to avoid an avalanche of lawsuits

142. *See supra* notes 61-64 and accompanying text.
143. *See supra* notes 74-75 and accompanying text.
144. *See supra* note 46.
145. *See supra* notes 130-36 and accompanying text.
146. *See supra* note 2. Since fair market value is defined by a sales analysis, the market value-sales method of valuation seems to be the standard required by NEB. REV. STAT. § 77-201 (1981): a uniform valuation within the class of tangible property absent a showing that a different method of assessment is necessary to achieve a closer approximation of actual value. *See supra* note 41.
147. *See supra* note 73. In order to achieve uniformity of taxation and arrive at a uniform standard of value, an earning capacity formula for farmland valuation must yield a valuation that still reflects an element of fair market value—fair market value being defined as the amount at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell, considering the land's ability to produce an income.
148. Op. Neb. Att'y Gen., No. 228 (Oct. 9, 1984).
149. *See supra* notes 118-20 and accompanying text.

by urban property owners requesting reduction of their land valuations, the Nebraska Department of Revenue concluded that its only alternative was to update the Land Manual.[150] This revision of the Land Manual resulted in approximately a 60 percent increase in the tax value of agricultural land.[151] Given the depressed farm economy,[152] this increase in the valuation of farmland could pose a serious economic threat to farmers and ranchers in Nebraska. It is not yet known what the real effects of strict adherence to the constitution and the property tax laws of this state would be.[153] The fear of what might happen, however, created an emotionally and politically charged atmosphere that led to an effort to amend the Nebraska Constitution to allow for the separate classification of farmland for property tax purposes.

B. The Legislative Response — Amendment 4

On August 30, 1984,[154] the Nebraska unicameral voted thirty-two to sixteen[155] to approve a resolution allowing agricultural land to be classified differently than other tangible property.[156] This resolution

150. To update the Land Manual, the Nebraska Department of Revenue used productivity values, rate of return on investment, and agriculutural land sales to arrive at new farmland valuations. Both the Land Manual and the new Land Manual base valuations on an earning capacity formula. The primary difference between the old and new manuals is the capitalization rate. The capitalization rate involves estimating a net rent or income from the property and then dividing that income by the known sale price. The capitalization rate was lowered in the new Land Manual to reflect the declining agricultural values in the current farmland market. This has resulted in a dramatic increase in farmland valuations, for as the capitalization rate is lowered, the valuation of the land increases accordingly. *See Estimated Impact of 100% Valuation by County*, 1983, UNICAMERAL UPDATE, Sept. 14, 1984, at 8 [hereinafter cited as *Estimated Impact*]. According to State Tax Commissioner Donna Karnes, the capitalization rate is too low, but as a result of the constitutional uniform and proportionate clause, and the supreme court's decision in *Kearney Convention Center*, "we're forced to go back to the market to get our cap rate to make it equal to other kinds of land." *Committee Hearing I, supra* note 19, at 21.

151. *Estimated Impact, supra* note 150, at 8.

152. *See supra* notes 22-23 and accompanying text.

153. *Floor Debate on LB2*, 88th Leg., Spec. Sess., 78 (1984) (statement of John DeCamp, Nebraska State Senator) [hereinater cited as *Floor Debate I*].

154. Reacting to the projected increase in farmland valuations resulting from the revision of the Land Manual, Nebraska Governor Robert Kerrey called for a special session of the Nebraska legislature to convene on August 16, 1984 for the purpose of addressing the farmland tax valuation issue. *Senators return for Special Session*, UNICAMERAL UPDATE, Sept. 14, 1984, at 2.

155. Thirty votes are needed for a proposed constitutional amendment to win final approval. NEB. CONST. art. XVI, § 1.

156. This resolution was a proposed constitutional amendment that would allow agricultural land to be classified separately for property tax assessments. During the special session, the legislature rejected a proposed constitutional amendment authorizing the legislature to provide a tax exemption for farmland that would be

(hereinafter Amendment 4), was approved by the voters in the November election,[157] and amended article VIII, section 1 of the Nebraska Constitution to read: "The Legislature may provide that agricultural land and horticultural land used solely for agricultural or horticultural purposes shall constitute a separate and distinct class of property for purposes of taxation."[158] In effect, Amendment 4 allows the state to set up some system other than 100 percent of market value to assess agricultural land.[159]

Proponents of Amendment 4 lobbied heavily for its passage.[160] The principal argument in favor of Amendment 4 was that the amendment was necessary to allow for a method of assessment that will provide a value for farmland based on its ability to produce an income.[161] Proponents pointed to the unique nature of farmland and argued that its value cannot be measured by the fair market sales price.[162] They

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similar to the homestead tax exemption, NEB. REV. STAT. §§ 77-3501 to -3529 (1981). The legislature also rejected a proposal to amend the constitution by removing the uniformity requirement, which would then allow the legislature to establish classifications for property. *See Ag Land Bill Clears Committee*, UNICAMERAL UPDATE, Sept. 14, 1984, at 5 & 7 (the exemption amendment died at the end of the special session and the resolution to abandon the uniformity provision was killed in committee).

157. Amendment 4 passed by a vote of 402,515 "for," and 171,558 "against." Omaha World Herald, Nov. 8, 1984, at 22, col. 6. The amendment was approved by voters in each of Nebraska's 93 counties. The heaviest opposition was recorded in Douglas, Lancaster, and Sarpy counties, but even in these primarily urban counties, the ratio of approval was nearly two to one. *Id.* at 22, col. 1.

158. Leg. Res. 7, 88th Leg., Spec. Sess. (1984).

159. *Committee Hearing I*, *supra* note 19, at 8 (statement of Robert Raun, Director of the Dep't of Agriculture). The type of system to be implemented is to be determined by the legislature. There are essentially two methods of reducing farmland valuations, one or both of which may be adopted by the legislature. The first method would essentially redefine actual value in the context of farmland to be the true earning capacity of the land without regard to its fair market value. The land would still be taxed at 100 percent of its actual value, but actual value for farmland would no longer have to reasonably reflect fair market value. An argument can be made that this result could be achieved under the current "greenbelt" constitutional provision. *See infra* note 212. The second method would allow farmland to be valued at actual fair market value, uniformly with all other tangible property, but setting the taxable value, to which the levy would be applied, at a lower percentage of actual value than 100 percent. It is likely that the former method will be adopted. During the special session, the legislature voted 31-16 to adopt a resolution declaring that agricultural or horticultural land should be valued for tax purposes based solely on the earning capacity of such land. *See Farmland Resolution Approved*, UNICAMERAL UPDATE, Sept. 14, 1984, at 15. As a practical matter, however, the net result would be about the same.

160. Numerous farm groups came out in favor of the amendment, including the Nebraska Farm Bureau Federation, the Nebraska Stock Growers Association, the Nebraska Livestock Feeders Association, and the Farmers Union of Nebraska.

161. *See Floor Debate I*, *supra* note 153, at 107 (statement of Loran Schmit, Nebraska State Senator).

162. *See supra* notes 130-36 and accompanying text.

also pointed out that since farming requires large amounts of capital, both in terms of land and equipment, farmers often have a relatively low income in relation to the value of the property they own.[163] As a result of the huge debts incurred by farmers to cover these necessary capital expenditures, the value of farmland owned may no longer be a true indication of wealth. The proponents of the amendment argued that the ability to pay property taxes is a function of both land value and income.[164] While these contentions have some merit, there are no easy answers to the plight of the farmer. The heavy tax burdens facing farmers are not unique to the farm economy, but plague all classes of property owners in Nebraska.[165] Viewed in this light, Amendment 4 is not an effective or desirable solution to the overall property tax problems facing the State of Nebraska.

C. Analysis of Amendment 4

Classification of property for tax purposes has survived scrutiny under the equal protection clause of the fourteenth amendment.[166] Despite this fact, classification is not the proper solution to relieve the property tax burden of Nebraska's farmers. The principal objections to implementation of classification in the property tax system are that classification will solve none of the major economic difficulties that have caused the agricultural community to struggle,[167] and that as a principle of taxation, classification is not good tax policy for any group.[168] In a study of states that have installed classified property tax systems, the Nebraska Tax Research Council found several impli-

163. *See Committee Hearing I, supra* note 19, at 20 (statement of Donna Karnes, Nebraska State Tax Comm'r).

164. *Id.*

165. *Id.* at 6-7 (statement of Robert Kerrey, Governor of Nebraska).

166. *See* Comment, *Preferential Assessment, supra* note 9, at 650. The equal protection clause, U.S. CONST. amend. XIV, § 1, does not preclude states from resorting to classification for purposes of legislation, provided that the classification scheme rests upon some difference that has a fair and substantial relation to the object of the legislation, so that in the end, all persons similarly circumstanced shall be treated alike. F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920).

167. *Committee Hearing II, supra* note 131, at 17-18 (statement of Charles Bacon, Executive Vice-President of the Nebraska Tax Research Council). Relieving the tax burden of agricultural landowners will not remedy the underlying causes of the depressed farm economy, but will help to relieve the financial burden of the farmer. In theory, however, this violates the primary principle of Nebaska's tax laws, that taxes are to raise revenues and not to promote social programs or provide special favors to special groups. *See Floor Debate I, supra* note 153, at 178-79 (statement of Vard Johnson, Nebraska State Senator). One state senator noted: "[T]he proposal in itself is like giving aspirin to a cancer patient. It is not going to cure it." *Floor Debate on LR 7*, 88th Leg., Spec. Sess., 355 (1984) (statement of John DeCamp, Nebraska State Senator) [hereinater cited as *Floor Debate II*].

168. *Committee Hearing II, supra* note 131, at 17-18 (statement of Charles Bacon, Executive Vice-President of the Nebraska Tax Research Council).

cations arising out of the creation of classification within a property tax system.[169]

First, property classification is simply a legalized shift of property tax from one class of taxpayer to another. A classificaton system shifts the burden of taxation every time a new property classification is created, often affecting the taxes of every taxpayer without his or her knowledge.[170] Second, classification is a step leading to a proliferation of classes and demands for preferential tax treatment.[171] Theoretically, there appears to be no logical stopping point once classification of property has begun. The classic example is Minnesota, which began with only four classes and now has over thirty separate classes and subclasses of property in its property tax system.[172] Third, a general, long-term effect of property classification is an ero-

169. *See generally* NEBRASKA TAX RESEARCH COUNCIL, NTRC DISCUSSION PAPER - CLASSIFICATION OF PROPERTY, PART I (Jan. 27, 1984) [hereinafter cited as DISCUSSION PAPER I]; DISCUSSION PAPER II, *supra* note 118; NEBRASKA TAX RESEARCH COUNCIL, NTRC DISCUSSION PAPER - CLASSIFICATION OF PROPERTY, PART III (Feb. 10, 1984) [hereinafter cited as DISCUSSION PAPER III] (series of discussion papers available from the Nebraska Tax Research Council that discuss the implications of applying a classification scheme to a property tax system).

170. *See* DISCUSSION PAPER III, *supra* note 169. When a new class is created, or the ratio of an existing class is lowered and the total amount of revenue to be raised remains the same, the tax burden of all other taxpayers is increased to compensate for the lost revenue. The average taxpayer is usually unaware of this shift and has no opportunity to protest. *See also* Note, *supra* note 1, at 862.

171. Nowhere was this fact more clearly demonstrated than on the floor of the Nebraska legislature during the special session to deal with the agricultural land valuation question. By a 12-27 vote, the legislators defeated an amendment proposed by Omaha Senator Bernice Labedz that would have allowed the separate classification of property owned by people living near plants emitting noxious odors or wastes from "activities relating to agricultural or horticultural uses." Senator Labedz noted that the stockyards, packing, and rendering plants create "highly offensive" odors and wastes that did not show up in the county assessor's appraisal of the property for taxation purposes. Senator Labedz stated: "It is my opinion that if farmers deserve a tax break, then those who are burdened by the wastes and odors from the production of farm products deserve a tax benefit also." *Ag Land Bill Wins 1st Round*, UNICAMERAL UPDATE, Sept. 14, 1984, at 10-11.

172. In 1906, Minnesota amended its constitution to state that "taxes shall be uniform on the same class of subjects." MINN. CONST. art. X, § 1. These few words created a wide-open situation for classification, resulting in chaos within the Minnesota property tax system. The chart below shows the range of property tax in six of Minnesota's property classifications, expressed as a percentage of market value, as determined by a 1982 Minnesota Department of Revenue assessment/sales ratio study:

sion of the tax base and an increase in tax rates.[173] Fourth, classification of property is a costly and administratively complex procedure.[174] Fifth, classification can result in higher costs for consumer goods and services and can be very regressive in shifting costs from the tax structure to the price structure.[175] Sixth, there is no logically sound, theoretical basis for classification. Once the constitutional rule for uniformity of taxation is abandoned, decisionmaking by political expediency results.[176] And finally, classification of property does not control or limit the overall property tax levies.[177]

Apart from the problems inherent in the creation of classifications within the property tax system, it is unclear whether Amendment 4 will address the real inequities that underlie the property tax burden faced by Nebraska farmers. Proponents of Amendment 4 argued that the amendment is not designed to create a tax break for farmers, but

Class	Low Percent	High Percent	State-wide Average
Residential	.40	1.26	1.05
Farm	.15	.90	.53
Industrial - Commercial	1.56	3.74	2.89
Apartment	.85	3.04	2.45
Utility	1.61	5.23	3.03
Railroad	2.43	5.35	4.33

This chart clearly shows that classification does indeed grant strong preferential tax treatment to selected classes of property. DISCUSSION PAPER II, *supra* note 118.

173. "Taxes are to raise revenues. The broader the base, the stronger the base, the greater support the people of our society have for our overall tax programs . . . it is important for our tax base to be broad and equal and fair." *Floor Debate I*, *supra* note 153, at 178-79 (statement of Vard Johnson, Nebraska State Senator).

174. A classification system increases litigation and uncertainty, compounding the controversies concerning property. Because classification of property can make a considerable difference in actual taxes paid, a taxpayer appeal is just as likely to be made based on the classification given the property as it is on the valuation placed on that property. This is contrary to desired objectives of simplicity and stability in the administration of property taxes. DISCUSSION PAPER I, *supra* note 169.

175. In each of the state property tax systems studied by the Nebraska Tax Research Council, the result of classification was to shift more of the property tax burden to the business sector. The highest assessment ratios are usually applied to the gas, electric, and telephone utilities which, using authorized rates of return on their services, increase their rates charged to customers. In general, when the burden of paying property tax is shifted to the business sector, this expense is added to the cost of doing business and thus results in higher prices for essential consumer goods and services. DISCUSSION PAPER III, *supra* note 169.

176. *See infra* notes 192-93 and accompanying text.

177. DISCUSSION PAPER I, *supra* note 169. Property tax classifications do not control government spending or the amount of revenue that must be raised in order to support the financial needs of the local taxing districts. Classification merely shifts the burden as to who will pay for that government spending. *See Committee Hearing II*, *supra* note 131, at 83-84 (statement of Ed Jaksha).

rather was designed to maintain the status quo of undervaluing farmland.[178] The problem, however, is that the present level of property tax in Nebraska is too high for both rural and urban property.[179] Maintaining farmland valuations at the status quo as it now exists does not address the inequities that many farmers face today under the current property tax system.[180] The problem with Amendment 4 is that it gives the legislature authority to deal with only one aspect of the overall property tax issue. By addressing only the agricultural land question, the legislature has omitted too many related issues and problems that are part of an interconnecting network of property tax inequities, issues and problems that must be addressed if the property tax system is to be made more equitable for all taxpayers.

In addition to the problem of valuation, a major difficulty with the Nebraska property tax system is that a large portion of the revenue raised from property taxes[181] goes to support the state's public school system.[182] The present method of funding the state's public schools has resulted in an inequitable tax burden on farmers. This burden will not be lifted by the adoption of Amendment 4.[183] The most logi-

178. *See supra* note 19 and accompanying text.

179. *See Committee Hearing II, supra* note 131, at 86-90 (statement of Ed Jaksha).

180. *See, e.g., supra* text accompanying notes 92-95.

181. Under the Nebraska property tax system, revenue is derived by applying a tax rate to the assessed value of the property. To establish the tax rate to be applied, a taxing district determines the amount of revenue it needs to operate, and divides this amount by the total assessed value of all the taxable, non-exempt property located within the given taxing district. The resulting figure represents the tax rate the local taxing district will use. This tax rate is usually referred to as a mill levy - a "mill" being one-tenth of one-hundredth (.001). Interview with Charles Bacon, Executive Vice-President of the Nebraska Tax Research Council, in Lincoln, Nebraska (Sept. 11, 1984) [hereinafter cited as Bacon Interview].

182. *Committee Hearing I, supra* note 19, at 49 (statement of Calvin Carsten, Nebraska State Senator). The Nebraska property tax system is complicated by a complex series of taxing districts through which public education is supported. *See generally Committee Hearing II, supra* note 131, at 55-70 (statement of Larry Vontz, Nebraska Dep't of Education) (description of property tax funding for public education in the State of Nebraska).

183. The amount of revenue a taxing district must raise varies with the type of education that district supports. Districts that support high schools and higher education (technical community colleges) require a greater amount of revenue to meet their funding needs. The amount of taxable property within the taxing district also varies from district to district. The combination of these two factors results in a variance from district to district in the mill levies that are applied in support of the state's public schools. Figures to be spent on the schools in Nebraska range from a high of $2.50 to a low of 20 cents on a $100 valuation. *Floor Debate I, supra* note 153, at 87 (statement of Don Wesely, Nebraska State Senator). The end result is that two farmers, both owning similar property assessed at the same value, could pay greatly disproportionate taxes on that property based merely on the location of that property.

While the passage of Amendment 4 might hold down the amount of taxes, it will not remedy the discrepancy caused by variance in the mill levy. One valid

cal way to deal with the inequities resulting from the present method of funding the state's public schools is not to go back to the agricultural land valuations applied in the past, but to reform the school tax system and the school districts in order for all residents of the state to support equitably the public school system.[184]

A futher criticism of Amendment 4 is that it does not target relief where relief is most desparately needed. Amendment 4 will provide the greatest tax relief for the large operation farmer, rather than the smaller farmer who is probably in more desperate need of relief.[185] The larger the farm operation, the larger the resulting tax relief should the state implement agricultural land classifications in the state's property tax system.[186] The principal criticism of offering this tax relief for the large farm operation is that these farmers usually have greater resources, and to provide them with additional assistance is unfair.[187] Whether these large, primarily corporate farmers have the resources to absorb a tax increase is open to debate, but the point is that this method of classifying farmland is not very effective at

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argument raised in favor of Amendment 4 is that if land valuations go up, state equalization aid for education could be lost. State aid is authorized by NEB. REV. STAT. §§ 79-1330 to -1344 (1981), for taxing districts with a small property tax base that cannot raise the required revenue from property taxes alone. If land values go up and the mill levies go down, boarderline counties might not meet the mill levy requirement specified by statute and lose that state aid. For a more indepth discussion, see *Committee Hearing II*, *supra* note 131, at 112-14 (statement of Howard Lamb, Nebraska State Senator).

184. *See Floor Debate I*, *supra* note 153, at 102 (statement of Don Wesely, Nebraska State Senator).

185. Criticizing the implications of Amendment 4, Nebraska State Senator Ernie Chambers stated that:

> [t]he little farms are through. When we set aside agricultural and horticultural land for special tax consideration we are doing it for the large corporations, the agribusiness corporations, the nonfarm corporations which are going to take over this land . . . . They are the ones who will take advantage of it. They are the only ones who can farm on a large enough scale to make a living.

Floor Debate I, *supra* note 153, at 171 (statement of Ernie Chambers, Nebraska State Senator).

186. If you cut the taxable value in half, the larger the value, the greater the reduction. For example, if you have two farmers, one who owns a farm valued at $100,000, the other who owns a farm valued at $1 million, the farmer with the $100,000 farm would receive a $50,000 exemption from taxation, while the farmer with the $1 million farm would receive a $500,000 exemption from taxation. Thus, to obtain uniformity of taxation within the class of agricultural land, an across the board reduction in the taxable value of farmland is required, whether this is accomplished by lowering the taxable value of the land's actual fair market value or by redefining actual value based on the land's earning capacity. *See supra* note 159. The net result is that there is greater tax relief for the large farm than for the small farm that may need the relief more. *See Floor Debate I*, *supra* note 153, at 231 (statement of Don Wesely, Nebraska State Senator).

187. *Id.*

targeting relief where it is needed the most. This is crucial because at present it is pure speculation as to how much the increased valuations are going to increase taxes on farmland in individual cases. The increase in taxes on farmland could range from zero to 90 percent. In a case where the taxing district consists entirely of rural property, as the valuation goes up, the tax levy goes down, and the overall amount of property taxes owed remains essentially the same. In a taxing district where agricultural land lies on the urban fringe, the farmland constitutes such a small portion of the total property in the taxing district that the increase in the value of that farmland is insufficient to bring about a reduction in the levy. Thus, the tax owing on such farmland increases.[188]

A final criticism of Amendment 4 is that it does not necessarily maintain the status quo as proponents of the amendment would like to believe.[189] Amendment 4 merely states that the legislature *may* treat agricultural property as a separate class.[190] It does not mandate that the legislature shall treat agricultural land as a separate class. The broad language of the amendment gives the legislature a great latitude to deal with the problem. Essentially, the legislature has two options for lowering farmland valuations. The legislature may decide to alter the definition of actual value for farmland, based on the land's earning capacity, or the legislature may provide that farmland be taxed at a lower percentage of actual value.[191] Theoretically, Amendment 4 could create severe potential weaknesses in the tax system since it gives the legislature the power to set a different tax rate every year.[192] Each year outside influences such as the economy and special interest groups could pressure the legislature into changing the tax rate. Not only could this create excessive administrative complexities, but it could also over-politicize the process.[193]

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188. *Committee Hearing I*, *supra* note 19, at 12 (statement of Robert Raun, Director of the Dep't of Agriculture). The composition of the average Nebraska taxing district is somewhere between 2/3 rural - 1/3 urban to 3/4 rural - 1/4 urban. At 100 percent valuation in the average district, as the levy goes down, it is estimated that taxes will still increase at a rate of between 8 to 23 percent. *Id.* at 13.

189. *See supra* note 19.

190. *See supra* note 26.

191. *See supra* note 159.

192. Bacon Interview, *supra* note 181.

193. *Id.* If the farm economy continues to decline, political pressure could force the legislature to drastically reduce farmland valuations to ease the farmers' tax burden, thus shifting that tax burden to urban property owners. Similarly, if the farm economy picks up, urban senators may feel pressure from their constituents to decrease the urban tax burden by raising farmland values to inflated levels. Besides the administrative costs of fighting over the farmland valuation issue every year, the potential for dramatic value changes could destabilize the property tax system. As one individual noted, "if we open up the door for the Legislature to annually take a look at the business of valuation, we destablilize the

A further question arises now that Amendment 4 has become a part of the Nebraska Constitution: whether the legislature should provide for a rollback provision similar to that utilized in the "greenbelt" constitutional amendment.[194] It seems that a rollback provision may be necessary in order to prevent speculators from taking advantage of the lower agricultural land valuations. Arguably, once land ceases to be used for agricultural purposes, it can no longer be classified as agricultural land and becomes tangible property that must be valued uniformly and proportionately.[195] When enacting legislation persuant to Amendment 4, the legislature will face many difficult challenges and will need to work with diligence to assure that the agricultural land valuation question is handled fairly and equitably, and does not degenerate into a political circus.

D. Evaluation and Alternative Proposals

The Nebraska Supreme Court's decision in *Kearney Convention Center* appeared to be a relatively simple tax valuation case, applying clear constitutional principles to the facts of that case. Because of the public and legislative responses, however, the court's decision could turn into the key that opens a Pandora's Box.[196] In an attempt to uphold and strengthen the constitutional requirement for uniformity and proportionality of taxation, the Nebraska Supreme Court found itself evoking the opposite result. Moreover, the passage of Amendment 4 could become the first small step that leads ultimately to a wide open property tax classification system,[197] which is neither effective nor desirable. Despite the passage of Amendment 4, it would be better for the state of Nebraska if the legislature rejected classification of property as a means of easing any one group's problem of high property taxes. A uniform property tax is part of a balanced tax system, while classification is contrary to basic principles of uniformity and equity.[198] In addition, uniform property tax assessment plays an important role in maintaining sound local government.[199]

According to the Nebraska Department of Revenue's response to the *Kearney Convention Center* case it appears that the tax burden of

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valuation problem and destablilize the problem of taxes." *Committee Hearing II*, *supra* note 131, at 83 (statement of Ed Jaksha).

194. *See supra* note 14.

195. *See supra* note 1.

196. *See Committee Hearing II*, *supra* note 131, at 81 (statement of Janet Edwards, Howard County Assessor) ("Open or general classification opens a Pandora's Box.").

197. *See supra* note 171.

198. *See* DISCUSSION PAPER III, *supra* note 169.

199. *Id.* Because the potential exists for the legislature to change the tax rate on farmland each year, the uncertainty regarding the potential revenue that land will bring could seriously impair fiscal planning. *See supra* note 181.

Nebraska farmers could greatly increase should the legislature fail to act upon its ability to seprately classify farmland.[200] Farm leaders point to economic factors and argue that this increased tax burden is unfair.[201]

It is possible, however, that should agricultural land be taxed at 100 percent of actual value, the valuations in the updated Land Manual would not withstand a court challenge of their validity. The recent trend of declining farmland values has created a situation in which the high valuations in the new Land Manual that prompted the legislative action to pass Amendment 4 may no longer be a valid indicator of the actual fair market value of farmland.[202] It has been suggested that the decline in farmland values may end up correcting the problem Amendment 4 was designed to address by eliminating a large portion of the 60 percent increase in farmland valuations projected by the new Land Manual.[203] In light of these recent market trends, it is unclear how much of a tax increase, if any at all, will be suffered by farmers if their land is taxed at 100 percent of the current fair market value. This debate concerning the true value of farmland and its taxation, however, is only part of a much larger, problem-riddled Nebraska tax system. This complex system of property taxes has resulted in extremely high property taxes and has created many problems since its inception.[204] The legislature has compounded these problems with its old standard solution: to "buy a little time by putting a little more

200. *See supra* notes 150-51 and accompanying text.

201. *See supra* notes 162-64 and accompanying text.

202. Recent surveys by the Federal Reserve Banks of Chicago and Kansas City have indicated one of the largest quarterly declines in farmland valuations for Nebraska and other midland states. In Nebraska, the average value of non-irrigated farmland decined 7.1 percent in the third quarter of 1984. Prices for irrigated land dropped 4.8 percent and ranchland one-tenth of one percent during this period. Since its peak values in 1981, when *Kearney Convention Center* began non-irrigated farmland in Nebraska has declined 32 percent in value. During this same period, irrigated land values fell 34 percent, and ranchland values dropped 38 percent. Omaha World Herald, Nov. 9, 1981 at 1, col. 2.

203. As the price of farmland declines, the 100 percent valuation at fair market value approaches prior valuation under the old Land Manual. This decline in the selling price of farmland has resulted in the fair market value of the land more closely reflecting what supporters of the old Land Manual felt to be the value of the land as used for agriculture. *See supra* note 145. This was not the case when the *Kearney Convention Center* controversy arose. Three or four years ago, people were paying outrageous prices for farmland, ignoring the reality of what that land was capable of producing. As the farm economy has declined, buyers have realized that the prices they were paying were not profitable. The falling prices began to reflect what people were willing to pay for the land based on what the land could produce. Interview with Professor Lawrence Berger, University of Nebraska College of Law, in Lincoln, Nebraska (Nov. 1984).

204. The "hurt" felt by farmers resulting from the increased tax burden is a "reflection of the entire system." *Floor Debate II*, *supra* note 167, at 355 (statement of John DeCamp, Nebraska State Senator).

state aid in instead of addressing the whole property tax system . . . ."[205] The court's decision in *Kearney Convention Center* forced the issue of reforming the state's property tax system, by pointing out one of the many inequities that exists in the present system, that being the undervaluation of farmland.

What then is the solution? Like most legal, political and economic issues, there is no one solution that will magically cure the problem and resolve the issue of inequitable property taxation. While providing a separate classification for farmland may be well intended, it is a cure that could prove worse than the disease.[206] Furthermore, it is extremely difficult to develop methods to effect equitable property tax relief or to plan a future course for the property tax system when addressing the problem in a piecemeal fashion. The principal task facing the legislature as a result of *Kearney Convention Center* is to change the overall property tax system and its inequities and injustices, and to provide the fairness that will benefit both urban and rural property owners. The principal actions that must be taken are to shift the local government's reliance away from property taxes,[207] and to find alternative sources for the funding of our public school system.[208]

Tax relief for agricultural property owners is still a viable possibility under the present uniform property tax system if certain conditions are met. To properly implement the uniform system, the state must assure that: (1) all taxable property within a local taxing district is reassessed at 100 percent of actual value as often as necessary in order to maintain accurate assessment levels;[209] (2) local government tax rates are adjusted accordingly to reflect the higher property values and to collect the same amount of revenue as is currently budgeted;[210]

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205. *Id.* at 354.

206. *See supra* notes 167-77 and accompanying text.

207. *See Committee Hearing I, supra* note 19, at 73 (statement of Loran Schmit, Nebraska State Senator). This would essentially mean placing a greater emphasis on raising revenue through the sales and income taxes authorized by NEB. REV. STAT. §§ 77-2701 to -27,124 (1981), or creating a sales tax on services.

208. *See, Committee Hearing II, supra* note 131, at 48-50 (statement of Martin Kahle, Nebraska State Senator). In addition to providing for alternate funding, the state should also look at restructuring the taxing scheme in order to distribute more evenly the burden of support. *See supra* notes 181-84 and accompanying text. For example, in Idaho, while the state has 40 school districts, 80 to 90 percent of school expenditures are funded from the state level and not from property taxes. *Committee Hearing II, supra* note 131, at 48 (statement of Martin Kahle, Nebraska State Senator).

209. *See* DISCUSSION PAPER III, *supra* note 169. It is not yet clear how many farmers will be affected by this action. The actual results will not be known until we value *all* property at full value for the first time. *See supra* notes 118-20 and accompanying text (no classification of property in Nebraska has been assessed at full value).

210. *Committee Hearing II, supra* note 131, at 18-19 (statement of Charles Bacon, Executive Vice-President of the Nebraska Tax Research Council). The state must

(3) consistency and uniformity in assessing the value of property is attained; (4) every effort is made to assess farmland at a value that is a true, accurate reflection of that particular property's value by utilizing the seven elements set out by statute[211] and by carefully using the laws enacted pursuant to the "greenbelt" constitutional amendment to protect farmers on the urban fringe from inflated market values;[212] and finally, (5) government spending must be closely monitored, and limited if at all possible.[213] If these steps are followed and combined with an overall decrease in property taxes, shared equally by all property taxpayers in all classes, the farmers may gain the same relief as they would have received under a classification scheme. This method would at least retain an element of fairness and equality in the property tax system.

V. CONCLUSION

Due to the fact that Amendment 4 was approved in the November 6, 1984 general election, the Nebraska legislature faces some serious problems in the area of property taxation and farmland valuation. Le-

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guard against allowing local taxing districts to increase taxes through the increased valuation, thus creating a revenue windfall.

211. *Id.* at 19.

212. *See supra* notes 10-15 and accompanying text. Some critics of Amendment 4 have argued that it is not necessary because the state already has the power to classify agricultural land separately for purposes of taxation. These critics argue that the language of the "greenbelt" amendment effectively designates agricultural use valuation. *See* 1973-74 Op. Neb. Att'y Gen. 244 (1974) ("Greenbelt" constitutional provision and NEB. REV. STAT. §§ 77-1343 to -1348 (Cum. Supp. 1984) are departures from the regular constitutional rule of uniformity of taxation). There are two potential problems with this theory. First, because of the current statutory zoning requirement, *see supra* note 13, the state would be forced to implement statewide zoning in order to make full use of the "greenbelt" law. This might be undesirable and difficult to achieve. *See Floor Debate II*, *supra* note 177, at 302 (statement of Jerome Warner, Nebraska State Senator). The second problem is that the specific legislative intent of the "greenbelt" amendment is to protect farmers on the urban fringe from being taxed on the speculative market value of the land. *See Revenue Committee Statement on LB 359*, 83rd Leg., 1st Sess. (1973) ("[T]his bill provides for special assessment for agricultural purposes within agricultural use zones . . . for . . . the owner of such land in rural-urban fringe areas subject to high valuations because of nearby residential and industrial developments . . . ."). A further problem with this theory is that the agricultural use value of farmland is essentially the same as fair market value in a primarily rural area. *See* Lapping, Bevins & Herbers, *supra* note 9, at 387. Thus, it is arguable that the Nebraska Supreme Court would interpret "agricultural use value" to mean nothing more than the fair market value considering the land's earning capacity, which was essentially the standard that existed prior to *Kearney Convention Center*. Interview with Professor Lawrence Berger, University of Nebraska College of Law, in Lincoln, Nebraska (Sept. 1984).

213. *See* DISCUSSION PAPER III, *supra* note 169 ("Taxpayers must demand and receive accountability from their elected officials at all levels of government in setting expenditures at a reasonable, acceptable, and affordable level.").

gally, the *Kearney Convention Center* case may have done little more than reaffirm the established constitutional principle of uniformity of taxation that had been ignored in practice.[214] Socially and politically, however, the court's decision created a storm of controversy that has called into question the basic ideas of uniformity and equity that underlie the structure of the present Nebraska property tax system. The court's decision has provided the Nebraska legislature with the opportunity and the excuse to examine past implementation of the state's property tax laws, as well as to reevaluate and revise the state's overall property tax system in order to promote fairness for all and to direct benefits where they are most needed. The legislature moved quickly to promote a constitutional amendment in hopes of maintaining the status quo. It may soon find that this emotional response to the court's decision in *Kearney Convention Center* is perpetuating a piecemeal problem-solving strategy that could ultimately compound the existing problems rather than eliminate them.

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214. *See supra* notes 148-160 and accompanying text.