

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Danny Pittman, Sarpy County Assessor,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee, and

L&L Timm Farms Inc., Melvin H. Timm
Family LP, and
Larry M. Timm,
Appellees.

Case Nos: 18A 0063, 18A 0064, 18A 0065,
19A 0169, 19A 0170, 19A 0171, 20A 0169,
20A 0170, 20A 0171, 21A 0058, 21A 0059
& 21A 0060

**DECISION AND ORDER REVERSING
THE DECISIONS OF THE SARPY
COUNTY BOARD OF EQUALIZATION**

For the County Assessor:

William J. Bianco,
Bianco Stroh, LLC

For the County Board:

Timothy R. Engler,
Max L. Rodenburg,
Rembolt Ludtke LLP

**For L&L Timm Farms, Melvin H. Timm Family LP,
and Larry M. Timm:**

Larry M. Timm, pro se

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTIES

The Subject Properties are comprised of three agricultural parcels, improved with farm home sites and farm sites, located in Sarpy County, Nebraska. The parcel numbers, owners of record, case numbers, and exhibit numbers of the property record files (PRF) are listed in the table below.

Parcel No.	Owner of Record	Case Numbers	PRF Exhibit No.
010431985	L&L Timm Farms	18A 0063	15
		19A 0170	18
		20A 0169	21
		21A 0059	24
010381171	Melvin H. Timm Family Limited Partnership	18A 0065	27
		19A 0169	30
		20A 0171	33
		21A 0058	36

010391975	Larry M. Timm	18A 0064	39
		19A 0171	42
		20A 0170	45
		21A 0060	48

II. PROCEDURAL HISTORY

For each tax year in the period 2018 through 2021, Sarpy County Assessor Danny Pittman (the County Assessor) assessed the Subject Properties. L&L Timm Farms, Melvin H. Timm, and Larry M. Timm (collectively, the Taxpayers) protested the assessments to the Sarpy County Board of Equalization (the County Board). Pursuant to Neb. Rev. Stat. § 77-1502.01, the County Board appointed a referee to hear the protests. The County Board reduced the assessments determined by the County Assessor. The assessed values determined by the County Assessor, the recommendation of the referee, the taxable value determined by the County Board, and the difference between the County Assessor’s and the County Board’s values are shown in the table below.¹

Parcel No.	Case Number	County Assessor	Referee	County Board	Difference
010431985	18A 0063	\$333,352	\$333,352	\$309,252	\$24,100
	19A 0170	\$347,768	\$328,418	\$328,418	\$19,350
	20A 0169	\$361,249	\$326,982	\$326,982	\$34,267
	21A 0059	\$369,774	\$322,833	\$322,833	\$46,941
010381171	18A 0065	\$457,072	\$457,072	\$432,972	\$24,100
	19A 0169	\$446,683	\$427,333	\$427,333	\$19,350
	20A 0171	\$434,031	\$399,890	\$399,890	\$34,141
	21A 0058	\$439,234	\$392,293	\$392,293	\$46,941
010391975	18A 0064	\$1,126,006	\$1,124,257	\$1,108,297	\$17,709
	19A 0171	\$1,137,647	\$1,121,967	\$1,121,967	\$15,680
	20A 0170	\$1,065,206	\$1,034,480	\$1,034,480	\$30,726
	21A 0060	\$1,054,851	\$1,012,606	\$1,012,606	\$42,245

As authorized by Neb. Rev. Stat. § 77-5007.01, the County Assessor appealed each of these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 18, 2021, with Commissioner Hotz

¹ See Ex. 1 through 12. The first two digits of the Commission’s case number indicate the tax year, e.g., 18A 0063 is an appeal of the 2018 tax year, 19A 0170 is an appeal of the 2019 tax year, etc.

presiding. Barry Couch, Tim Ederer, Martin Becker, and Larry Timm testified at the hearing. Exhibits 1 through 223 were received without objection.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.² When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.³

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayers must introduce competent evidence of the actual value of the Subject Properties in order to successfully claim that the Subject Properties are overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayers establish that the County Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner* at 283, 811 (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.⁹ The Commission may also take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property, the results

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

must be correlated to show uniformity.¹⁹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²⁰

V. FINDINGS OF FACT AND ANALYSIS

The sole dispute in these appeals is the actual value of the “first acre” or “primary acre” of agricultural parcels that contain a farm home site.

Under Neb. Rev. Stat. § 77-1359,

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

(1) Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

* * * * *

(3) Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

In addition, regulations promulgated by the Department of Revenue, at 350 Neb. Admin. Code Ch. 14 § 005, state,

005.01 There are other land uses on a [*sic*] agricultural or horticultural parcel which are not classified as agricultural land and horticultural land uses. ... Other

¹⁹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁰ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

land uses shall not be classified as agricultural and horticultural land and shall be assessed at 100% of actual or market value.

005.01A Farm home site shall mean one acre or less of land that is contiguous to a farm site and upon which is located a residence and necessary improvements needed for residential purposes. This land shall not be classified or assessed as agricultural or horticultural land.

005.01B Farm site shall mean land containing improvements that are agricultural or horticultural in nature, including an uninhabitable or unimproved farm home site, all of which is contiguous to agricultural or horticultural land. This land shall not be classified as agricultural or horticultural land and shall not include a home site.

Regulations promulgated by the Department of Revenue also provide the following definitions of “farm home site” and “farm site” at 350 Neb. Admin. Code, Ch. 10 § 002:

002.08 Farm site means the portion of land contiguous to land actively devoted to agriculture, which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site, all of which is contiguous to agricultural or horticultural land. This land will not be classified as agricultural or horticultural land and will not include a home site.

002.09A Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision. This land must not be classified or assessed as agricultural or horticultural land.

Consistent with these statutes and regulations, the County Assessor designated a portion of the Subject Properties as farm home sites of one acre or less, assessed as residential property because they are improved with residences, and another portion as farm site. The parties agreed that, with the exception of the farm home sites and farm sites, all of the land on the Subject Properties was properly assessed as agricultural land receiving special valuation.²¹ The parcels’ qualification for special valuation, the per-acre assessed values for the agricultural land, and the assessed values of the improvements are not in dispute.

²¹ See Neb. Rev. Stat. §§ 77-1344 through 77-1347.01.

In addition to the legal requirements cited above, professionally accepted appraisal principles, including the concept of economies of scale, will also be considered in our review of these appeals. In that respect, the appraisal literature states:

Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and highest and best use.²²

According to the testimony of experts for both the County Board and the County Assessor, because of economies of scale, the primary acre (i.e., the farm home site) commands a higher per-acre price than any additional acres. However, in Sarpy County, no sales of comparable one-acre lots were available to use in determining the exact value of the farm home site. According to the testimony, this necessitated the creation of statistical models to determine what portion of the sale price of multi-acre parcels is attributable to the one acre farm home site.

Timothy Ederer has been employed by the Sarpy County Assessor's Office since 2004.²³ He originally developed the methodology used to assess the Subject Properties, although the methodology was applied to the Subject Properties by another County Assessor employee, Martin Becker. Ederer testified that he developed the statistical model in 2009. The model was created to determine the allocation of value between agricultural land, which receives special valuation, and land with buildings, which does not. Sales of agricultural land from comparable counties without non-agricultural influences were used to determine the special value of the land. Sales from Sarpy County with non-agricultural influences were used to determine the value of the non-agricultural portions, i.e., the farm home sites and the farm sites. The sales selected for use in Ederer's farm home site models met the following criteria: (1) Raw, undeveloped land; (2) No City or SID services are present such as water, sewer, and paved streets; and (3) May be located on a gravel road, paved road, highway or secondary artery.²⁴ When a relevant sale was identified that had utilities such as water, sewer, or electrical, the sales price was adjusted to

²² *The Appraisal of Real Estate*, The Appraisal Institute, 198 (14th ed. 2013).

²³ Ederer's qualifications are found at Exhibit 93.

²⁴ Ex. 149:5, testimony of Ederer, Becker.

remove the contributory value of those improvements before the sale was included in the model.²⁵

The farm home site model developed by Ederer has been in use consistently since 2009, with changes to account for changes in regulations. The model is annually reviewed using the ratio of assessed values to sale prices for parcels that sold during a study period specified by regulation.²⁶ The values resulting from the model have been upheld consistently by the Commission in individual valuation cases and during our annual statewide equalization proceedings.²⁷ The model was also peer reviewed by Larry Clark of the International Association of Assessing Officers (IAAO), who described it as “a reasonable approach to valuing land ... I could find nothing wrong with the approach you took.”²⁸

The farm home site models used to assess the farm home sites of the Subject Properties are shown at Ex. 138 (2018), Ex. 60 (2019), Ex. 98 (2020), and Ex. 186 (2021).²⁹ The models incorporate qualified sales from a rolling three year period prior to the assessment date, so they change each year as new sales data is added and old sales data drops out.³⁰ Each model was built using sales of unimproved, unplatted, unzoned land within Sarpy County. The sales are plotted on a power curve that predicts the market value of parcels of different sizes.

Martin Becker, who has been an employee of the Sarpy County Assessor for the past eight years and has an extensive background in assessment and appraisal prior to that, testified at the hearing.³¹ Becker testified that no improved, platted, or zoned sales were used in the farm home site models for 2018 through 2020 because the County Assessor’s Office is prohibited from doing so by statute. Becker acknowledged that one sale with electric utility was used in the 2021

²⁵ The standard operating procedures for determining the value of these improvements and the annual values are found at Exs. 87-89 (2019), Exs. 127-129 (2020), Exs. 170-172 (2018), and Exs. 215-217.

²⁶ See, e.g., Ex. 57:1, Ex. 95:1.

²⁷ The levels of value for every class of property in Sarpy County met the statutory requirements for accuracy and quality of assessment in each tax year at issue in these appeals. See *Reports and Opinions of the Property Tax Administrator for Sarpy County* for 2018 through 2021. The Commission may consider the *Reports and Opinions* whether or not they are included in the record. 442 Neb. Admin. Code Ch. 5 § 031.02 (2021).

²⁸ Ex. 91:1.

²⁹ We note that, for each tax year, the County Assessor utilized one model to assess farm home sites (the farm home site model) and a different model to assess rural residences that were not associated with an agricultural parcel (the rural land model). The difference appears to be that the rural land model includes sales of land within rural subdivisions platted for development as multi-acre residential parcels, but the farm home site model does not. The County Assessor also offered an “abstracted rural farm home site model” for each tax year at issue; these abstracted models included sales of both improved and unimproved land. Our analysis in the present appeals focuses on the models used to assess the farm home sites on the Subject Properties, which are the farm home site models for each tax year.

³⁰ See, e.g., Ex. 57:1, Ex. 95:1.

³¹ Becker’s qualifications are found at Exhibit 94.

farm home site model without adjustment; the model was subsequently revised to remove the value of the electric utility, but the original model was used to assess the Subject Properties.³² According to Becker, the revision made no difference in the indicated values for the Subject Properties.

Becker used the models developed by Ederer to assess the Subject Properties for each of the tax years at issue. For each tax year, the County Assessor assigned the highest value to the farm home site and a lower value to the acres comprising the farm site, as indicated by the power curve model. The per acre values assigned to the farm home site and the farm site by the County Assessor,³³ and the difference between them, are shown in the table below:

Case No.	Farm Home Site	Farm Site	Difference
18A 0063	\$40,700	\$16,600	\$24,100
18A 0064	\$32,560	\$13,280	\$19,280
18A 0065	\$40,700	\$16,600	\$24,100
19A 0169	\$41,500	\$22,150	\$19,350
19A 0170	\$41,500	\$22,150	\$19,350
19A 0171	\$33,200	\$17,720	\$15,480
20A 0169	\$56,700	\$22,560	\$34,140
20A 0170	\$51,030	\$20,305	\$30,725
20A 0171	\$56,700	\$22,560	\$34,140
21A 0058	\$69,500	\$22,560	\$46,940
21A 0059	\$69,500	\$22,560	\$46,940
21A 0060	\$62,550	\$20,305	\$42,245

The shaded rows above are cases involving Parcel No. 010391975, which is located adjacent to a landfill and received a downward adjustment to the farm site and farm home site values because of that location.³⁴ For all of the unshaded rows above, the assessed value of the primary acre corresponds to the value indicated by the County Assessor’s farm home site model for that tax year.

Becker testified that many properties in Sarpy County were valued using the farm home site model. Becker created “What If” models for each tax year at issue, using the same sales that went into the County Assessor’s model, but utilizing the primary acre value that was determined

³² Compare Ex. 185 (original) with Ex. 186 (revised) and Ex. 224 (twice revised).

³³ These values are taken from Exs. 135:15, 136:12, 137:12, 57:18, 95:25, 96:23, 97:23, 182:11, 183:11, and 184:10.

³⁴ We infer that the downward adjustment was 20% for 2018 and 2019, and 10% for tax years 2020 and 2021.

by the County Board for tax year 2019 protests (\$22,150). These “What If” analyses resulted in sales/assessment ratios of 95% for 2018,³⁵ 84% for 2019,³⁶ 84% for 2020,³⁷ and 83% for 2021.³⁸ Accordingly, these models show that the primary acre values set by the County Board resulted in sales/assessment ratios that were not within the statutorily defined acceptable range of value for the class of residential property (92% to 100%) for tax years 2019, 2020, and 2021.³⁹ The County Assessor also offered “equalization comparables” for each tax year to demonstrate that comparable properties were not assessed uniformly as a result of the County Board’s decision to reduce the value of the primary acre for protesters, but not for property owners who did not protest.

Larry Timm testified at the hearing. Timm is a farmer who owns, directly or through intermediary companies or partnerships, approximately 2,000 acres of farmland. These include each of the three parcels involved in these appeals. Timm testified that his daughter lives in a small, older farmhouse on Parcel No. 010381171.⁴⁰ The parcel also includes some old farm buildings and old equipment.⁴¹ Parcel No. 010391975 is adjacent to a landfill (as noted above) and experiences frequent traffic from garbage trucks; it also includes an older house rented out by Timm to a tenant. Parcel No. 104031985 is Timm’s homestead and center of farming operations. Timm is not a licensed appraiser, but he has firsthand knowledge of land valuation and equalization from representing Sarpy County on the Area 5 Amland Valuation Board, which existed primarily to address disparities in assessed values for agricultural land between adjoining counties before it was dissolved by the Legislature.

Timm believed that the assessed value of the one acre farm home site should be reduced to the same assessed value as the acres containing the farm site. In support of this assertion, Timm listed three reasons for his protests to the County Board. First, the models used by the County Assessor were “hypothetical” and “go vertical” at the end, meaning that the power curve generated by the models indicates much higher prices for the primary acre than for the other

³⁵ Ex. 156, testimony of Becker.

³⁶ Ex. 77, testimony of Becker.

³⁷ Ex. 114, testimony of Becker.

³⁸ Ex. 204, testimony of Becker.

³⁹ See Neb. Rev. Stat. § 77-5023 (Reissue 2018). Although the ratio is within the acceptable range, we note that the County Board actually set the value of the primary acre at \$16,600, significantly lower than the \$22,150 that produced an acceptable ratio, in 2018.

⁴⁰ The house, built in 1920, is 1,088 square feet. It is currently assessed at \$56,411. See Ex. 27:2.

⁴¹ The 2018 PRF indicates that these are four utility sheds built from 1910 and 1930, which were assessed at a total of \$598 for tax year 2018, and a pole building built in 2000 assessed at \$3,855. See Ex. 27:4.

acres. Second, zoning ordinances prohibit Timm from subdividing an acre of the Subject Properties and selling that acre separately, so the increased land value placed on the primary acre by the County Assessor represents something that Timm cannot market or sell. And third, Timm did not agree with the concept of applying the same valuation across the county regardless of location, condition, or history. According to Timm, the farm home site of a farmer whose family has been on the same land for generations was being assessed at the same value as an individual who bought a ten-acre parcel exclusively for use as a residence; Timm disagreed with this practice. Timm further argued that, by assessing value on the farm buildings and having a higher land value for the farm site acres where the buildings are located, the County Assessor was “double dipping.”

Timm testified that his opinions of value for the Subject Properties were developed by lowering the assessed value of the farm home site (the primary acre) to the same value as the farm site acres.

Barry Couch has been a professional appraiser for about 35 years.⁴² He is currently a self-employed appraiser consultant/instructor who has performed appraisal work for the County Board for the past six years, first as a referee, and then as a referee coordinator.⁴³ The referees are all licensed appraisers; the referee coordinator reviews their decisions on valuation protests and either agrees or makes changes. Couch was the referee for the Subject Properties for 2018 and the referee coordinator in each of the other tax years in issue.

In analyzing the County Assessor’s modeling, Couch believed that the County Assessor had used a combination of platted and unplatted lots in developing the model.⁴⁴ Couch was also concerned that the model’s power curve “over-explained” the primary acre value. He observed that the purpose of the model was to extrapolate value outside of the data points (i.e., sales). According to Couch, because the smallest sale used in the model was a 3.03 acre parcel, but the

⁴² Couch’s qualifications are found at Exhibit 49.

⁴³ Neb. Rev. Stat. § 77-1502.01 permits county boards of equalization to appoint referees, who may hear protests, make findings, and provide recommendations to the county board. The county board retains the authority to make the order recommended by the referee or a different order, to hear additional testimony, or to set aside the referee’s findings and hear the protest anew. Under applicable case law, the ultimate responsibility to equalize valuations rests upon the county board of equalization, and it cannot avoid this duty by using the power to appoint referees. *Zabawa v. Douglas County Bd. of Equal.* 17 Neb. App. 221, 757 N.W.2d 522 (2008).

⁴⁴ Couch made reference to the list of sales included in the rural land model. As noted above, it is our understanding that the County Assessor used the rural land model to assess rural residential property that were not associated with a farm and used the farm home site model to assess the primary acre of otherwise agricultural parcels.

model includes sales up to 160 acres,⁴⁵ the power curve will “accelerate” and “overfit the extremes.” Couch attempted to re-create the County Assessor’s model, but he was unable to do so without incorporating platted sales into his dataset. Couch acknowledged that the power curve is an accepted mass appraisal method and that economies of scale result in lower per-acre prices for larger parcels.

Couch developed *linear* and *curvilinear* models, as opposed to the County Assessor’s *power curve* models. These models, found at Exhibits 50 through 52, produce what might be described as “flatter” results with less acceleration of the curve for smaller areas of land. The primary acre values indicated by Couch’s linear and curvilinear models, using only the unplatted sales incorporated in the County Assessor’s farm home site model, are shown in the table below, contrasted with the values indicated by the County Assessor’s power curve and the values set by the County Board:

Year	Model	0-25 Acre Sales	0-160 Acre Sales	Assessor’s Value	County Bd. Value (-1985) ⁴⁶
2018 ⁴⁷	Linear	\$27,298	\$17,467	\$40,700	\$16,600
	Curvilinear	\$30,008	\$16,463		
2019 ⁴⁸	Linear		\$23,274	\$41,500	\$22,150
	Curvilinear		\$23,198		
2020 ⁴⁹	Linear		\$17,267	\$56,700	\$22,433
	Curvilinear		\$17,526		
2021 ⁵⁰	Linear	\$55,032	\$24,609	\$69,500	\$22,559
	Curvilinear	\$61,184	\$23,394		

As the chart above shows, the values set by the County Board do not match the farm home site values indicated by either Couch’s models or the County Assessor’s models. No County Board members testified at the hearing. As we understand Couch’s testimony on this point, he believed that the farm home site value set by the County Assessor improperly included utilities,

⁴⁵ The largest parcel involved in a sale used in the farm home site model for 2018 was actually 75.22 acres.

⁴⁶ This value is calculated by subtracting the value determined by the County Board from the value determined by the County Assessor for PID 010431985.

⁴⁷ Ex. 50:3-4.

⁴⁸ Ex. 51.

⁴⁹ Ex. 52.

⁵⁰ Ex. 24:14-16.

which could be remedied by reducing the value of the farm home site to the value of the farm site, and he advised the County Board to do this for tax years 2019, 2020, and 2021. It remains unclear why Couch’s recommendations were different from the values indicated by his own statistical models, but it appears that the County Board attempted to follow his recommendations for tax years 2019, 2020, and 2021. Thus, the County Board’s *farm home site* values closely correlate to the County Assessor’s *farm site* values:

Year	County Board’s <i>Farm Home Site</i> Value	County Assessor’s <i>Farm Site</i> Value
2018	\$16,600	\$16,600
2019	\$22,150	\$22,150
2020	\$22,433	\$22,560
2021	\$22,559	\$22,560

The disagreement between the County Assessor’s power curve model and Couch’s linear and curvilinear models is not *whether* the market value of a single acre would be higher, but rather, *how much* higher the market value of a single acre would be. All of the statistical models indicate that the farm home site of an unimproved parcel would sell for more than any subsequent acres. Couch, Ederer, and Becker all agreed on this point in their testimony as well. Nothing in the record before the Commission supports a conclusion that the actual or market value of the first acre and any subsequent acres would be the same. Thus, the County Board’s decisions were not based on competent evidence, and the presumption in favor of the County Board is rebutted. Assigning the value indicated by the County Assessor’s model for the *farm site* to the *farm home site*, while ignoring all available information and analysis about the value of the farm home site, is unreasonable.

The County Assessor also presented clear and convincing evidence that other properties in Sarpy County, which were comparable to the Subject Properties but whose owners did not protest their assessments to the County Board, remained assessed at the values indicated by the County Assessor’s models and methodology for each of the tax years in issue. The duty of a county board of equalization is to “fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.”⁵¹ The Nebraska Court of Appeals has held that “[t]o set the valuation of similarly situated property, i.e.

⁵¹ Neb. Rev. Stat. § 77-1501 (Reissue 2018).

comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁵² Nothing in the record suggests that the County Board’s actions were intended to equalize the values of the Subject Properties with comparable properties in Sarpy County. By lowering the values only of protested properties, the County Board has set the valuations of comparable properties at materially different levels, which is arbitrary and unreasonable.⁵³

VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

For the reasons set forth above, the decisions of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the taxable value of the Subject Properties for tax years 2018, 2019, 2020, and 2021 are vacated and reversed.⁵⁴
2. The taxable values of the Subject Properties are:

Parcel No.	Tax Year	Taxable Value
010431985	2018	\$333,352
	2019	\$347,768
	2020	\$361,122
	2021	\$369,774

⁵² 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵³ *Id.*

⁵⁴ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

Parcel No.	Tax Year	Taxable Value
010381171	2018	\$457,072
	2019	\$446,683
	2020	\$434,031
	2021	\$439,234

Parcel No.	Tax Year	Taxable Value
010391975	2018	\$1,126,006
	2019	\$1,137,647
	2020	\$1,065,206
	2021	\$1,054,851

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2018, 2019, 2020, and 2021.
7. This Decision and Order is effective for purposes of appeal on April 27, 2022.⁵⁵

Signed and Sealed: April 27, 2022

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁵⁵ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.