

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brad L. and Mary B. Moser,
Appellants,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 19A 0086, 20A 0228, 18A 0204,
19A 0125, 20A 0229, 18A 0203, 19A 0126,
20A 0230, 19A 0128, 20A 0231, 19A 0120,
20A 0225, 19A 0124, 20A 0224, 19A 0123,
20A 0226, 19A 0122, 20A 0223, 19A 0121
& 20A 0227

**DECISION AND ORDER AFFIRMING
THE DECISIONS OF THE
LANCASTER COUNTY BOARD OF
EQUALIZATION**

Case Nos. 18A 0224 & 19A 0127

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

For the Appellants:

David C. Solheim,
Solheim Law Firm

For the Appellee:

Daniel J. Zieg,
Deputy Lancaster County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Properties comprise nine parcels, primarily unimproved agricultural land, located in Lancaster County, Nebraska. The parcel numbers and corresponding case numbers are shown in the table below. The legal descriptions and property record files (PRF) for the Subject Properties are found at the exhibits referenced in the table.

Parcel Number	Tax Year	Case Number	PRF Exhibit #
02-36-400-001-000	2018	18A 0224	26
	2019	19A 0127	27
	2020	20A 0228	28

Parcel Number	Tax Year	Case Number	PRF Exhibit #
01-14-400-001-000	2018	18A 0204	32
	2019	19A 0125	33
	2020	20A 0229	34
01-14-400-004-000	2018	18A 0203	38
	2019	19A 0126	39
	2020	20A 0230	40
08-18-200-001-000	2019	19A 0128	43
	2020	20A 0231	44
08-18-400-004-000	2019	19A 0086	46
07-18-200-002-000	2019	19A 0120	49
	2020	20A 0225	50
01-24-300-002-000	2019	19A 0124	53
	2020	20A 0224	54
07-17-400-006-000	2019	19A 0123	57
	2020	20A 0226	58
07-06-100-003-000	2019	19A 0122	61
	2020	20A 0223	66
01-01-300-002-000	2019	19A 0121	69
	2020	20A 0227	79

II. PROCEDURAL HISTORY

For each parcel of the Subject Property, in each tax year at issue, the Lancaster County Assessor's Office (the County Assessor) determined the assessed value of the Subject Property, Brad L. Moser and Mary B. Moser (the Taxpayers) protested the assessment, and the Lancaster County Board of Equalization (the County Board) made a determination of the taxable value of the parcel. The values set by the County Assessor and the County Board are shown in the table below, along with the exhibit number of the County Board's determination.

Parcel Number	Case Number	County Assessor	County Board	Exhibit #
02-36-400-001-000	18A 0224	\$612,500	\$598,900	1
	19A 0127	\$570,300	\$570,300	2
	20A 0228	\$551,300	\$551,300	3
01-14-400-001-000	18A 0204	\$296,100	\$296,100	4
	19A 0125	\$275,000	\$275,000	5
	20A 0229	\$262,500	\$262,500	6
01-14-400-004-000	18A 0203	\$284,900	\$284,900	7
	19A 0126	\$266,500	\$266,500	8
	20A 0230	\$259,900	\$259,900	9
08-18-200-001-000	19A 0128	\$511,500	\$511,500	10

Parcel Number	Case Number	County Assessor	County Board	Exhibit #
	20A 0231	\$492,000	\$492,000	11
08-18-400-004-000	19A 0086	\$670,200	\$528,100	12
07-18-200-002-000	19A 0120	\$252,300	\$252,300	13
	20A 0225	\$247,200	\$247,200	14
01-24-300-002-000	19A 0124	\$407,500	\$407,500	15
	20A 0224	\$372,500	\$372,500	16
07-17-400-006-000	19A 0123	\$605,700	\$605,700	17
	20A 0226	\$559,600	\$559,600	18
07-06-100-003-000	19A 0122	\$686,900	\$686,900	19
	20A 0223	\$686,300	\$686,300	20
01-01-300-002-000	19A 0121	\$874,700	\$874,700	21
	20A 0227	\$869,000	\$869,000	22

The Taxpayers appealed each of these decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on April 5, 2021, with Commissioner Hotz presiding. Exhibits 1 through 101, 121 and 122 were admitted. Exhibits 103 through 120 and 123 were not admitted because they were not provided to the County Board by the deadlines established by the Commission’s order for hearing. Exhibit 102 was marked but not offered or received. Case No. 19A 0086, which had been consolidated with the other appeals, was dismissed on the Taxpayers’ motion during the hearing.

III. STANDARD OF REVIEW

The Commission’s review of the determinations of the County Board of Equalization is de novo.¹ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.²

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

¹ See 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).

² *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.³

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.⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵

The Taxpayers must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁶ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayers establish that the Board's valuation was unreasonable or arbitrary.⁷

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.⁸ The Commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

IV. APPLICABLE 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 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

³ *Id.*

⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ 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).

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

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

⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹¹

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.¹² Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value.¹⁷ 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.¹⁸ Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.¹⁹

Special valuation means the value that land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses.²⁰ According to the regulations of the Department of Revenue,

The special valuation assessment provides for a taxable value based solely on seventy-five (75) percent of the actual value of land for agricultural or horticultural purposes or uses, without regard to the actual value the land might have for other purposes or uses, allowing persons wishing to continue to engage in agriculture as a livelihood, from being forced to discontinue their agricultural endeavors as a result of excessive tax burdens.²¹

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹³ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Supp. 2020).

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-132 (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-1343(5) (Reissue 2018).

²¹ 350 Neb. Admin. Code, ch. 11 § 001.01. See also Neb. Rev. Stat. §§ 77-1343 through 77-1347.01.

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.²² The constitutional requirement of uniformity in taxation extends to both rate and valuation.²³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁴ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁵

In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²⁶ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁷ 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.²⁸ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³⁰

V. FINDINGS OF FACT AND ANALYSIS

Mary Moser testified on behalf of the Taxpayers. Moser is co-owner of each of the Subject Properties, and she is familiar with their soil types and other characteristics. She has worked as an accountant for 42 years, specializing in farm accounting. She also participates in managing the farms on the Subject Properties and performs all the bookkeeping and Farm Service Agency

²² Neb. Const. art. VIII, § 1.

²³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁴ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013).

²⁵ *Id.*

²⁶ See *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²⁷ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁸ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

³⁰ *Id.* at 673, 94 N.W.2d at 50.

(FSA) paperwork, and works in the field. She does not have any formal training or education in assessing or appraising land or improvements on land.

The opinion of a property owner who is familiar with her property and knows its worth is generally considered competent evidence to rebut the presumption in favor of a decision of a county board of equalization.³¹ In these appeals, however, Moser's specific opinions of value were based on her belief that the Subject Properties should be assessed at the same value as property located in Saline County. As explained below, because that belief was incorrect, we find that her opinions of value did not constitute competent evidence to rebut the presumption in favor of the County Board.³²

Derrick Niederklein testified on behalf of the County Board. Niederklein is employed as Chief Field Deputy for the County Assessor's Office, a position he has held since 2019. From 2009 through 2019 he was employed by the Department of Revenue, Property Assessment Division, including two years as Revenue Division Manager, and from 2004 through 2009, he worked as a Property Tax Field Liaison for the Department of Property Assessment and Taxation.³³ Niederklein was the principal author of Lancaster County's assessment methodology for 2019 and 2020, and he was a significant contributor in 2018.

The Taxpayers raised four primary issues with the assessment of the Subject Properties. First, they asserted that the agricultural land components of all of the Subject Properties should be assessed at the same per acre values as agricultural land of the same Land Classification Group (LCG)³⁴ in Saline County, and that the farm sites and farm home sites on the two improved parcels should be assessed at the same per acre values as farm sites and farm home sites in Saline County. Second, they alleged that the Subject Properties had various conditions, such as power lines in or around the properties, sloped and terraced land, and standing water, that reduced their actual value. Third, they asserted that the farm site and farm home site on parcel no. 01-01-300-

³¹ *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

³² See *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 948, 911 N.W.2d 551, 561 (2018) ("That determination involves considering not only whether the taxpayer presented admissible evidence but specifically whether the substance of the evidence presented by the taxpayer was competent to rebut the presumption that the Board faithfully performed its duties and had sufficient competent evidence to make its determinations.").

³³ Niederklein's Curriculum Vitae is located at Exhibit 93. The Department of Property Assessment and Taxation was merged with the Department of Revenue in 2007.

³⁴ An LCG is a classification of agricultural or horticultural land based on soil type and use. For example, land with an LCG of 1D falls into the most productive group of soil types ("1") and is used for dryland farming ("D"). The regulations governing the classification of soils into LCGs are found at 350 Neb. Admin. Code, ch. 14 § 004.08 *et. seq.*

002-000 were smaller than the County Assessor determined, and thus, the sites were over-assessed. And fourth, they asserted that the irrigated land on one parcel of the Subject Property should be assessed as dryland to equalize the assessment with a neighboring property.

A. Comparability with Saline County

We begin by stating plainly that the Taxpayers are not entitled to have property in Lancaster County equalized with comparable property in Saline County. “The object of Nebraska’s uniformity clause is accomplished if all of the property *within the taxing jurisdiction* is assessed and taxed at a uniform standard of value.”³⁵ “The purpose of equalization of assessments is to bring the assessment of different parts of *a taxing district* to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.”³⁶ The taxing jurisdiction in these appeals is Lancaster County, not Saline County. To obtain equalization relief, the Taxpayers would have to show that their property was grossly overvalued compared with other property in the same taxing jurisdiction, i.e., Lancaster County.

On a statewide level, equalization is achieved between counties when the levels of value for each county fall within the acceptable range established by the Legislature.³⁷ For both Lancaster and Saline counties, the levels of value for agricultural and horticultural land were within the required 69% to 75% statutory range for each tax year in issue.³⁸ The levels of value for residential and commercial property were within the required 92% to 100% statutory range for each tax year in issue.³⁹ The same analysis applies to the Taxpayers’ assertion that their home site and farm site values should be set at the values used by Saline County. The Taxpayers are not entitled to equalization on a parcel-by-parcel basis across taxing jurisdictions.

The next question is whether the Saline County sales and the assessed values derived from them prove that the assessments of the Subject Properties were incorrect as a matter of actual value rather than equalization. The Subject Properties are within Lancaster County Market Area

³⁵ *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 246, 808 N.W.2d 598, 622 (2012) (emphasis added).

³⁶ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013) (emphasis added).

³⁷ See Neb. Rev. Stat. §§ 77-5022 through 77-5028 (Reissue 2018). Acceptable levels of value are found at Neb. Rev. Stat. § 77-5023(2) (Reissue 2018).

³⁸ See *2018 Reports and Opinions of the Property Tax Administrator, Lancaster County 18*; *2019 Reports and Opinions of the Property Tax Administrator, Lancaster County 18*; *2020 Reports and Opinions of the Property Tax Administrator, Lancaster County 18*; *2018 Reports and Opinions of the Property Tax Administrator, Saline County 17*; *2019 Reports and Opinions of the Property Tax Administrator, Saline County 18*; *2020 Reports and Opinions of the Property Tax Administrator, Saline County 17*.

³⁹ *Id.*

1, the only market area for agricultural and horticultural land in Lancaster County. Saline County had three market areas for agricultural land for tax years 2018, 2019, and 2020. Saline County Market Area 1 is split into two portions, one in the central and western part of the county and a smaller strip along its eastern border with Lancaster County.⁴⁰ Moser testified that the Subject Properties are within five miles of Lancaster County’s border with Saline County and physically similar to agricultural land in the eastern strip of Saline County Market Area 1.

Assessed values in Saline County Market Area 1 are generally lower than Lancaster County Market Area 1. For illustration, the following table shows the 2018 weighted average values for irrigated land, dryland, and grassland for Lancaster County Market Area 1 and Saline County Market Area 1, which Moser considered the most comparable to the Subject Properties.⁴¹

	Irrigated Wt. Avg.	Dryland Wt. Avg.	Grassland Wt. Avg.
Lancaster MA 1	\$6,150	\$4,617	\$2,002
Saline MA 1	\$4,229	\$3,748	\$1,799

The parties agree that all of the Subject Properties’ agricultural and horticultural land was eligible for, and was assessed using, special valuation, meaning the land was assessed at the value it would have for agricultural or horticultural uses without regard to the value the land would have for other purposes or uses, such as commercial or residential development.⁴² Special valuation assesses agricultural land that is influenced by non-agricultural factors at its uninfluenced value.

The Lancaster County Assessor analyzes the degree of non-agricultural influence on agricultural and horticultural land within the county annually. For tax years 2018, 2019, and 2020, the analysis indicated that sales of parcels larger than 70 or 75 acres (depending upon the year) within Lancaster County did not have non-agricultural influences. Sales that were re-zoned for non-agricultural purposes or sales with a higher likelihood of development were not included in determining special value, regardless of parcel size.

⁴⁰ Exhibits 98, 99, 100.

⁴¹ See *2018 Reports and Opinions of the Property Tax Administrator, Lancaster County* at 39, and *2018 Reports and Opinions of the Property Tax Administrator, Saline County* at 29. Full tables containing average acre values for each LCG in each county can be found in the 2018, 2019, and 2020 *Reports and Opinions* for Saline and Lancaster counties.

⁴² See Neb. Rev. Stat. § 77-1343 (Reissue 2018).

The County Assessor primarily used Lancaster County sales to determine agricultural land values for the tax years in issue by comparing these values against sales from other counties within six miles and twelve miles of Lancaster County, and for grassland, sales from counties in southeast Nebraska that are primarily grass. The County Assessor also reviewed land rental rates as an indicator of land value. Niederklein testified that the land rental rate was about 20% higher for dryland in Lancaster County than for Saline County.

The County Assessor's written assessment methodology for tax year 2018 indicates that the County Assessor utilized sales of land in Butler, Gage, Johnson, Jefferson, Otoe, Pawnee, Richardson, and Saline counties, as well as sales of parcels that were 70 acres or more in Lancaster County.⁴³ Niederklein explained that the methodology was "broad in scope" and did not specify how the sales from Saline County or any other county were used. However, he testified that sales from both Saline County Market Area 1 and Gage County were used, at least for comparison purposes, in the 2018 assessment methodology. For each tax year in issue, the *Reports and Opinions of the Property Tax Administrator* include an "Average Acre Value Comparison" comparing assessed values of each LCG to the assessed values of those LCGs in neighboring counties.⁴⁴ Niederklein testified that the Property Tax Administrator selected these counties and that their inclusion in the *Reports and Opinions* did not indicate that the County Assessor used sales from those counties to set agricultural land values in Lancaster County.

Both Niederklein and Moser testified that the portion of Saline County Market Area 1 most comparable to the Taxpayers' property was the isolated eastern strip. This strip comprises 14 out of 212 total sections in Saline County Market Area 1, about 6.6%.⁴⁵ The Taxpayers specifically requested values for land based on the average per acre values determined from sales throughout Saline County Market Area 1, not just sales from the small strip by the eastern border.

The *Reports and Opinions of the Property Tax Administrator* indicate that the defining feature of Saline County Market Area 1 is a lack of available groundwater,⁴⁶ but at least one of the Subject Properties and the nearby Morrison farm have available groundwater. And although

⁴³ Exhibit 84:1.

⁴⁴ 2018 *Reports and Opinions of the Property Tax Administrator, Lancaster County* 39; 2019 *Reports and Opinions of the Property Tax Administrator, Lancaster County* 34; 2020 *Reports and Opinions of the Property Tax Administrator, Lancaster County* 31.

⁴⁵ Exhibit 100.

⁴⁶ 2018 *Reports and Opinions of the Property Tax Administrator, Saline County* 14; 2019 *Reports and Opinions of the Property Tax Administrator, Saline County* 16.

the soil types found in the eastern strip of Saline County Market Area 1 are similar to the soil types in the area of the Subject Properties, those soil types are not similar to those predominant in the larger portion of Saline County Market Area 1.⁴⁷ The record does not support a conclusion that sales from the 198 other sections of Market Area 1, which are separated from the eastern strip by Market Area 2 and Market Area 3, are comparable to the Subject Properties.

For all the foregoing reasons, we find that the Saline County sales and the assessed values derived from them do not constitute sufficient evidence that the assessments of the Subject Properties were incorrect, arbitrary, or unreasonable.

B. Condition of the Subject Property

Moser described several conditions that might reasonably be expected to affect the Subject Properties' value, such as power lines running across fields, sloped and terraced land, standing water, an underground gas pipeline, and buildings in poor condition. However, the Taxpayers did not produce any evidence to quantify the impact of these conditions, and Moser acknowledged that she did not know how much the power lines would affect the value of the Subject Properties. The burden is on the Taxpayers to introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁴⁸ Without some way to quantify the impact of the power lines and other conditions on the market value of the Subject Properties, the mere existence of the conditions does not constitute sufficient evidence that the values set by the County Board were incorrect, arbitrary, or unreasonable.

C. Home Farm: Site Size

For Parcel No. 01-01-300-002-000 (“the Home Farm”), Moser commissioned a report from a drone operator to show the sizes of the building sites.⁴⁹ According to the report, one of the houses and associated land cover 20,060.81 square feet (.461 acres), the second house and associated land cover 73,914.38 square feet (1.697 acres), and the “farm block” and its associated land cover 175,455.09 square feet (4.028 acres). Grassland, which Moser asserted was

⁴⁷ 2018 Reports and Opinions of the Property Tax Administrator, Saline County 30; 2019 Reports and Opinions of the Property Tax Administrator, Saline County 34; 2020 Reports and Opinions of the Property Tax Administrator, Saline County 30.

⁴⁸ *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565, 570, 563 N.W.2d 785, 788-89 (1997).

⁴⁹ A copy of the report is found at Exhibit 67:54-59.

hayed, covers 107,821.24 square feet (2.475 acres). That is a total of 2.158 acres attributable to the houses and associated land and 4.028 acres attributable to the farm block.

Of the eight comparable properties offered by the County Board,⁵⁰ one has an “AHS – Ag Home Site” listed at 0.9 acres and assessed at \$64,800;⁵¹ and one has an “AHS – Ag Home Site” without a specific size listed, assessed at \$72,000.⁵² The 2019 PRF for the Morrison farm lists the “AHS – Ag Home Site” at 0.9 acres, assessed at \$64,800.⁵³ The 2019 and 2020 PRFs for parcel no. 07-06-100-003-000 (“Liz’s Farm”) list an “AHS – Ag Home Site” at 0.9 acres, assessed at \$64,800. From these facts, we infer that the County Assessor assessed farm home sites at \$72,000 per acre for tax year 2019.

Although the Agricultural Land Summary within the PRFs for the Home Farm for tax years 2019 and 2020 indicate that the parcel contained 4.32 acres of “homesite” and 4.58 acres of “farm site,” the Agricultural Land Summary does not attribute any value to those acres.⁵⁴ The Market Land Information sections of the PRFs indicate that only 1.2 acres were assessed as “AHS – Ag Home Site,” at \$86,400,⁵⁵ and 2 acres were assessed as “RFS-Ag Farm Site,” at \$12,000.⁵⁶ The total assessed value of the land portion of the Home Farm was \$332,300 for tax year 2019 and \$326,600 for tax year 2020, which is the rounded sum of \$86,400, \$12,000, and the “Total Ag Assessed” value listed on the Agricultural Land Summary.⁵⁷ Thus, only 1.2 acres of the Home Farm were assessed as farm home site and only 2.0 acres were assessed as farm site, which is less than the 2.158 acre actual size of the farm home site and the 4.028 acre actual size of the farm site indicated by the Taxpayers’ drone report.

The regulations of the Department of Revenue state that a farm home site means “one acre or less of land ... upon which is located a residence,”⁵⁸ but the Home Farm has two separate residences, so up to two full acres could permissibly be assessed as farm home site. It appears

⁵⁰ See Exhibits 70-78.

⁵¹ Exhibit 74:1.

⁵² Exhibit 78:1. The remaining six comparables indicate that the sites are either “RHS-Home Site” or “RHSW-Home Site,” which appear to correspond to a residential classification for the parcels as opposed to an agricultural classification. See Exhibits 71:1, 72:1, 73:1, 75:1, 76:1, and 77:1.

⁵³ Exhibit 24:19. We note that $0.9 \times \$72,000 = \$64,800$.

⁵⁴ Exhibits 69:5, 79:5.

⁵⁵ I.e., $\$72,000 \text{ per acre} \times 1.2 \text{ acres}$.

⁵⁶ Exhibits 69:1, 79:1.

⁵⁷ The “Total Ag Assessed” value was \$233,942 for tax year 2019, Exhibit 69:5, and the “Total Ag Assessed” value was \$228,128 for tax year 2020, Exhibit 79:5.

⁵⁸ 350 Neb. Admin. Code, ch. 005.01A.

from the record that the sizes assessed for both farm home site and farm site are smaller than the actual size of the farm home sites and the farm site on the Home Farm parcel. This evidence does not support a conclusion that the Home Farm is over-assessed.

D. Equalization with the Morrison Farm

Parcel No. 02-36-400-001-000 (“Mary’s Farm”) has center pivot irrigation. Moser identified a nearby parcel that had center pivot irrigation but was not assessed as irrigated land, Parcel No. 01-02-100-001-000 (“the Morrison farm”). Because Lancaster County only has one market area for agricultural land, we are satisfied that irrigated acres of any given LCG on the Morrison farm are comparable to irrigated acres of the same LCG on Liz’s Farm. The documents Moser submitted to the County Board during her 2018 and 2019 protests include photographs and other compelling evidence of pivot irrigation on the Morrison farm,⁵⁹ but the 2018 and 2019 PRFs for the Morrison farm do not indicate any portion of the land was assessed as irrigated land.⁶⁰ On that basis, the Taxpayers argued that the irrigated land on Mary’s Farm should be equalized with the Morrison farm and assessed as dryland. Niederklein testified that the County Assessor was not aware of the irrigation pivots on the Morrison farm prior to 2020, when the land was assessed as irrigated land. He implied that the County Assessor’s failure to include the irrigated land in the 2018 and 2019 assessments of the Morrison farm was the result of Morrison’s failure to report the installation of the pivots, and he testified that the failure to assess the land as irrigated land was not intentional.

As stated above, if taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that the valuation placed on the property, when compared with valuations placed on other similar properties, is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.⁶¹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁶² However,

Where the taxpayer succeeds in establishing that the Board’s valuation is grossly excessive to that of comparable properties, the standard of review contemplates two reasons sufficient to rebut the statutory presumption favoring the Board’s decision.

⁵⁹ See Exhibits 23:11-15, 24:19-29,

⁶⁰ See Exhibits 23:11-14, 24:19-21, .

⁶¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁶² *Id.* at 673, 94 N.W.2d at 50.

Systematic exercise of intentional will constitutes one reason, but the standard also specifies failure of plain duty as an equally sufficient basis.⁶³

In the context of an appeal to this Commission, the systematic exercise of intentional will or failure of a plain duty is that of the County Board, not the County Assessor. During the protest process, the Taxpayers presented the County Board with clear evidence that the Morrison farm included irrigated land that was not being assessed as irrigated land. At that point, the County Board had a plain legal duty to equalize the assessments, even though the result may have been that Liz’s Farm was assessed at less than the actual value.⁶⁴

For tax year 2018, Liz’s Farm included the following irrigated acres:⁶⁵

LCG	Acres	Rate ⁶⁶	Value
1A	16.79	\$6,769	\$113,613
2A	47.83	\$6,056	\$289,676
3A1	4.08	\$5,625	\$ 22,928
4A1	5.47	\$4,875	\$ 26,666
4A1	13.93	\$4,875	\$ 67,894
TOTAL:			\$520,777

Treated as dryland of the same LCG, these acres have the following equalized values:⁶⁷

LCG	Acres	Rate ⁶⁸	Value
1D	16.79	\$5,344	\$ 89,726
2D	47.83	\$4,631	\$221,501
3D1	4.08	\$4,500	\$ 18,360
4D1	5.47	\$3,375	\$ 18,461
4D1	13.93	\$3,375	\$ 47,014
TOTAL:			\$395,062

⁶³ *Zabawa v. Douglas County Bd. of Equal.*, 17 Neb. App. 221, 757 N.W.2d 522, (2008).

⁶⁴ See *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

⁶⁵ Exhibit 26:4.

⁶⁶ This rate is 75% of actual value, listed as “Adj Rate” in the PRFs.

⁶⁷ Per acre rates are taken from the dryland values applied to the Morrison farm, see Exhibit 23:13.

⁶⁸ This rate is within the range of 69% to 75% of actual value, listed as “Adj Rate” in the PRFs.

That is a difference of \$125,715 in the total assessed value of the parcel for tax year 2018. For tax year 2019, Liz’s Farm included the following irrigated acres:⁶⁹

LCG	Acres	Rate ⁷⁰	Value
1A	16.79	\$6,188	\$103,857
2A	47.30	\$5,400	\$255,425
3A1	4.17	\$4,988	\$ 20,808
4A1	7.73	\$4,575	\$ 35,374
4A1	14.70	\$4,575	\$ 67,271
TOTAL:			\$482,735

Treated as dryland of the same LCG, these acres have the following equalized values:⁷¹

LCG	Acres	Rate ⁷²	Value
1D	16.79	\$4,875	\$ 81,851
2D	47.83	\$4,200	\$200,886
3D1	4.08	\$4,013	\$ 16,373
4D1	5.47	\$3,300	\$ 18,051
4D1	13.93	\$3,300	\$ 45,969
TOTAL:			\$363,130

That is a difference of \$119,605 in the total assessed value of the parcel for tax year 2019. Because the irrigated parcels on the Morrison farm were assessed as irrigated land for tax year 2020, no equalization for that tax year is necessary.

VI. CONCLUSIONS

Case No. 19A 0086 should be dismissed.

In Case Nos. 20A 0228, 18A 0204, 19A 0125, 20A 0229, 18A 0203, 19A 0126, 20A 0230, 19A 0128, 20A 0231, 19A 0120, 20A 0225, 19A 0124, 20A 0224, 19A 0123, 20A 0226, 19A 0122, 20A 0223, 19A 0121 and 20A 0227, the Commission finds that there is not 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

⁶⁹ Exhibit 27:4.

⁷⁰ This rate is within the range of 69% to 75% of actual value, listed as “Adj Rate” in the PRFs.

⁷¹ Per acre rates are taken from the dryland values applied to the Morrison farm, see Exhibit 24:21.

⁷² This rate is within the range of 69% to 75% of actual value, listed as “Adj Rate” in the PRFs.

is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable.

In Case Nos. 18A 0224 and 19A 0127, 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 all the reasons set forth above, the appeals of the Taxpayer are denied, with the exception of Case Nos. 18A 0224 and 19A 0127, in which the decisions of the County Board are vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. Case No. 19A 0086, Parcel No. 08-18-400-004-000, is dismissed with prejudice. The County Board’s decision in that appeal is undisturbed. The taxable value of the parcel for tax year 2019 is \$528,100.
2. The County Board’s decisions determining the value of the Subject Properties in Case Nos. 20A 0228, 18A 0204, 19A 0125, 20A 0229, 18A 0203, 19A 0126, 20A 0230, 19A 0128, 20A 0231, 19A 0120, 20A 0225, 19A 0124, 20A 0224, 19A 0123, 20A 0226, 19A 0122, 20A 0223, 19A 0121 and 20A 0227 are affirmed.
3. The taxable values of the Subject Properties in Case Nos. 20A 0228, 18A 0204, 19A 0125, 20A 0229, 18A 0203, 19A 0126, 20A 0230, 19A 0128, 20A 0231, 19A 0120, 20A 0225, 19A 0124, 20A 0224, 19A 0123, 20A 0226, 19A 0122, 20A 0223, 19A 0121 and 20A 0227 are as follows:

Parcel Number	Tax Year	Case Number	Taxable Value
02-36-400-001-000	2020	20A 0228	\$551,300
01-14-400-001-000	2018	18A 0204	\$296,100
	2019	19A 0125	\$275,000
	2020	20A 0229	\$262,500
01-14-400-004-000	2018	18A 0203	\$284,900
	2019	19A 0126	\$266,500

	2020	20A 0230	\$259,900
08-18-200-001-000	2019	19A 0128	\$511,500
	2020	20A 0231	\$492,000
07-18-200-002-000	2019	19A 0120	\$252,300
	2020	20A 0225	\$247,200
01-24-300-002-000	2019	19A 0124	\$407,500
	2020	20A 0224	\$372,500
07-17-400-006-000	2019	19A 0123	\$605,700
	2020	20A 0226	\$559,600
07-06-100-003-000	2019	19A 0122	\$686,900
	2020	20A 0223	\$686,300
01-01-300-002-000	2019	19A 0121	\$874,700
	2020	20A 0227	\$869,000

4. In Case Nos. 18A 0224 and 19A 0127, the decisions of the County Board are vacated and reversed.
5. The taxable values of the Subject Properties in Case Nos. 18A 0224 and 19A 0127 are as follows:

Parcel Number	Tax Year	Case Number	Taxable Value
02-36-400-001-000	2018	18A 0224	\$473,185
	2019	19A 0127	\$450,695

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

10. This Decision and Order is effective for purposes of appeal on August 24, 2021.⁷³

Signed and Sealed: August 24, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁷³ 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.