

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jean G. Vinduska, Trustee, Jean G. Vinduska, Rev. Trust
Appellant,

Case No: 10A-63
Decision

v.

Sarpy County Board of Equalization,
Appellee.

For the Appellant:

Jarel G. Vinduska, Co-Trustee of
Jean G. Vinduska Revocable Trust

For the Appellee:

Kerry Schmid,
Assistant Sarpy County Attorney

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 148.70 acre parcel located in Sarpy County, Nebraska, improved with two residences and two sheds. The subject property is qualified for special valuation. The unimproved lands were assessed as agricultural land and horticultural land at their special value. The land classified as site and the improvements were assessed at actual value. The legal description of the Subject Property is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$292,831 for tax year 2010. Jean G. Vinduska, Trustee, Jean G. Vinduska, Rev. Trust (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$242,522. The County Board determined that the assessed value for tax year 2010 was \$292,831. (E1).

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits (Taxpayer did not submit any exhibits) and submitted a Pre-Hearing Conference Report, as ordered by the

Commission. The parties stipulated to the receipt of County exhibits 1 through 29. The Commission held a hearing on October 12, 2011.

III. STANDARD OF REVIEW

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

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.

Id. 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value). The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). The commission may also “take notice of judicially cognizable facts and in addition 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

IV. VALUATION

A. Law

Under Nebraska law,

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

Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach."

Neb. Rev. Stat. §77-112 (Reissue 2009). The Courts have held that “[a]ctual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

Agricultural land and horticultural land means a parcel of land 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. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.

Neb. Rev. Stat. §77-1359 (1) (Reissue 2009). A parcel of land means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. See, Neb. Rev. Stat. §77-132(Reissue 2009).

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.

Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

As of the Assessment date at issue in the above captioned appeal Nebraska Law defined Agricultural land as “...a parcel of land, excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes...” See, Neb. Rev. Stat §77-1359 (Reissue 2009). The Subject Property consists of land that meets this definition of Agricultural or Horticultural land which is subject to special valuation and land that, because of a farm home and out buildings located on it, is not Agricultural or Horticultural land.

The Taxpayer stated that the basis of his appeal is the assessment of the acres of the subject property used for a farm home site or farm site, he did not contest the value of the improvements located on the Subject Property or the value of the unimproved agricultural and horticultural acres subject to special valuation. The Taxpayer further alleged that the valuation model used by Sarpy County to value the farm site and farm home site is unreasonable and arbitrary. The

Taxpayer stated that the value of land designated as farm site and farm home site should only be based on average per acre sale price of land.

The Taxpayer alleges that the approximate actual value of agricultural and horticultural land in Sarpy County is \$5,500 per acre. The Taxpayer testified that he based this per acre value on the total purchase price of recent farm sales and an appraisal that had been prepared on a different parcel of agricultural and horticultural land owned by the co-trustee of the Taxpayer and located near the subject property. The Taxpayer did not offer any property record files or any other information regarding the farm sales he based his opinion on, or the characteristics of the sold properties for the Commission to consider. The Taxpayer also did not offer the above referenced appraisal report, nor did he call as a witness the appraiser who prepared the appraisal to testify regarding the appraisal report or the assessed value of the Subject Property. The Taxpayer testified that this opinion of value, based on the approximate value of \$5,500 per acre applied to the 3.14 site acres on the Subject Property was \$115,738, however the record before the Commission does not demonstrate how he calculated the total land value for the Subject Property.

The Taxpayer alleged that the decision of the County was unreasonable and arbitrary because the rural land valuation model developed by the Assessor's office used two sales of property located in Lienemann's subdivision to determine the value of the farm home site acre. (See, Exhibit 10 page 3, and Exhibit 11). When the Taxpayer called an Appraiser from the Sarpy County Assessor's office as a witness however, the Appraiser testified that the sales in the Lienemann's subdivision were not used to set the base value for the Rural Land model. The County's Appraiser testified that sales located in SID's or close to cities were not used to set the base values for the model but were used to determine adjustments to the base value or to "calibrate" the model.

The County's Appraiser testified that there were no sales in Sarpy County that represented the typical rural residential parcel so the Assessor's office developed the 2010 rural land model to estimate the contribution to value of acres of land used or to be used as a farm home site or farm site. (E10). The County's Appraiser testified that the model was developed with the assistance of a Computer Assisted Mass Appraisal system that utilized both property subject to special valuation (unimproved) and properties that were not subject to special valuation

(improved) and that as a result there is no clean report that can be produced to demonstrate the adjustments made to the base value determined by the model. The graphs contained in the County Assessor's 2010 Rural Land Model packet show the relationship of the selling price of *all* farm sales and rural land sales in Sarpy County from July 1, 2007 to June 30, 2009, even though not all of these sales were used to develop the Rural Land Model values, as well as the values determined by the Rural Land Model. (E10:4-5).

“Graphical analysis can help the appraiser discern systematic relationships in land values, which can then be incorporated into valuation schedules and adjustment factors. In general, sale price per unit is the dependent variable and should be depicted on the vertical (y) axis of the graph. Any other variable for which data are available should be selected as the independent variable and represented on the horizontal (x) axis.

“One variable of particular interest is the number of units, that is, the number of square feet, front feet or buildable units. Often there is a systematic negative relationship between the number of units and sale price per unit: The greater the number of units, the lower the price per unit. At least up to a point.” *Property Appraisal and Assessment Administration*, The International Association of Assessing Officers (1990) p. 185.

When the sales were graphed by the County Assessor they show that as the size of a sold parcel increased its per acre sale price declined. The trail of green triangles that represents a line through the data points was developed after several tries to obtain a best fit.

Valuation is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977). There is evidence to support the determinations of the County Assessor that sites contributed value on a sliding scale and that the scale applicable in this instance is \$62,000 for the first acre, \$10,000 for each of the second, third and fourth acres, and \$6,200 for each succeeding acre. The record demonstrates that these contributions to value made by the Farm Home Site and Farm Site portions of the subject property were adjusted based on proximity to a highway. There is no evidence to support the recommendations of the referee or the allegations of the Taxpayer.

The Nebraska Supreme Court has held “[t]hat the Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that

was aimed at discrediting valuation methods utilized by the county assessor, failed to meet the burden of proving that value of her property was not fairly and proportionately equalized or that the valuation placed upon her property for tax purposes was unreasonable or arbitrary.” *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983). That is the situation that the Commission faces in this appeal, the Taxpayer has presented no evidence of value for any property in the County and the values as determined by the Appraiser after review of available information, are the most reasonable estimate of the taxable value of the subject property.

V. EQUALIZATION

A. Law

“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 this Constitution.” *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999). Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the Subject Property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177

Neb. 390, 128 N.W.2d 820 (1964). If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959)

B. Summary of the Evidence

The Taxpayer alleges that farm site and home site acres have not been equalized with comparable like-kind properties in the same class as the subject property according to the State Constitution and Statutes.

As discussed above, the Taxpayer did not offer his appraisal referenced earlier or exhibits regarding sales of alleged comparable properties for evidentiary purposes during the hearing. The Commission does not have the ability to compare the ratio of the assessed valuation to the actual valuation required for equalization purposes because the Taxpayer did not provide sufficient evidence of actual values nor did it provide sufficient evidence of the sales of the alleged comparable properties. See, *Cabela's Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 97 N.W.2d 623 (1999). Thus, the Commission does not find evidence of a lack of uniformity in the determination of the assessed valuation of the Subject Property.

V. CONCLUSION

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 determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2010 is affirmed¹.

2. The assessed value of the Subject Property for tax year 2010 is:

Land:	\$ 169,921.00
Improvements:	\$ 118,446.00
<u>Outbuildings:</u>	<u>\$ 4,464.00</u>
Total:	\$292, 831.00

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 (2011 Supp.)

4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

5. Each party is to bear its own costs in this proceeding.

6. This decision shall only be applicable to tax year 2010.

7. This order is effective for purposes of appeal on August 9, 2013.

Signed and Sealed: August 9, 2013.

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.

¹ Assessed value, as determined by the county board of equalization, 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.

CONCURRING OPINION BY PRESIDING HEARING OFFICER THOMAS D.

FREIMUTH:

I find that the County’s model for determining the valuation of the Subject Property’s 1st acre farm home site and the 2.14 acre farm site is arbitrary and unreasonable. Because the Taxpayer did not offer his referenced appraisal or otherwise provide sufficient evidence of disputed value, however, I concur with Commissioner Salmon’s decision to affirm the Sarpy County Board’s determination that the actual value of the Subject Property for tax year 2010 was \$292,831.

I. OVERVIEW

Following is a chart that sets forth the background of this 2010 appeal by the Taxpayer:

	Assessor Notice Value	Taxpayer Protest Value	Referee Value	Board Value
Ag Land	\$94,861	\$94,861	\$94,862	\$94,861
1st Acre Home Site	\$55,800	\$5,000	\$20,000	\$55,800
2.14 Acre Farm Site	\$19,260	\$10,700	\$4,750	\$19,260
Residence	\$118,446	\$118,446	\$118,446	\$118,446
Outbuilding	\$4,464	\$4,464	\$4,464	\$4,464
Total	\$292,831	\$233,471	\$242,522	\$292,831

The Taxpayer does not dispute the contribution to value made by the lands classified above as Ag Land, Residence or Outbuilding. The contention of the Taxpayer is that the contribution to value by the one acre farm home site and the 2.14 acre farm site is excessive.

There are two residences on the Subject Property and two sheds spread over a total of 3.14 farm home site and farm site acres. For purposes of analyzing the assessment and taxation of “site” acres in the special valuation and agriculture context for the 2010 tax year at issue, Nebraska Statutes section 77-1359 (1) provides that “agricultural land and horticultural land means a parcel of land, **excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel.**”² Accordingly, because the 3.14 “site” acres are not agricultural and horticultural land, they are assessed at 100% of actual value (as opposed to 75% of actual value in the case of agricultural or horticultural land).³

² Neb. Rev. Stat. §77-1359 (1) (Reissue 2009) [Emphasis added.].

³ See, Neb. Rev. Stat. §77-201 (Reissue 2009).

In addition to Nebraska Statutes section 1359(1) referenced above, section 1359(3) and 1359(4) also govern the treatment of farm home site and farm site property. These subparts of section 1359 provide as follows:

- (3) Farm home site means not more than one acre of land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes, and such improvements include utility connections, water and sewer systems, and improved access to a public road; 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.⁴

In applying Section 1359 for 2010 assessment purposes, the County Assessor and the County Board relied upon the County Assessor's Rural Land Model found at Exhibit 10 to value the Taxpayer's one acre farm home site and the 2.14 acre farm site.⁵ As indicated in the chart above, the County determined that the value of the one acre site amounted to \$55,800 and the value of the 2.14 acre site amounted to \$19,260, thereby rejecting the referee's recommendation.⁶

The County's Rural Land Model set forth at Exhibit 10 includes seven pages of charts and graphs. The application of the Model is explained by the County Assessor's Office in Exhibit 9, which is entitled "Standard Operating Procedures...Rural Site Valuation Non-Ag Other Use" (referred to herein as "Rural Site SOP"). The County's Rural Site SOP at page 2 of Exhibit 9 provides as follows with respect to tax year 2010: (1) the first acre farm home site is valued at \$62,000; (2) secondary "site" acres two through four are valued at \$10,000 per acre; and (3) residual site acres beyond the fourth acre are valued at \$6,200 per acre.

The County arrived at the \$55,800 first acre farm home site value by multiplying \$62,000 by .9, apparently in order to adjust for the fact that the Subject Property is adjacent to Highway 31.⁷ Neither the County's Rural Site SOP nor its other Exhibits are clear regarding this 10 percent adjustment. Nonetheless, this Commissioner concludes that a 10 percent highway adjustment was used by the County based on (1) Exhibit 8's use of the word "Site" next to Highway 31,

⁴ Neb. Rev. Stat. §77-1359 (Reissue 2009).

⁵ See, E1:1; E2; E10.

⁶ E6:5.

⁷ E8 & E13:5.

which runs close by the Subject Property's site acres; and (2) use of a .9 multiplier for "HWY" found at Exhibit 13, page 5.

II. FIRST ACRE FARM HOME SITE AND FARM SITE LEGISLATIVE HISTORY

In order to understand the assessment of the first acre farm home site and farm site throughout Nebraska for property tax purposes, I believe it is useful to review recent legislative history regarding Nebraska Statutes section 1359.

A. **L.B. 808: Effective date January 1, 2007**

1. **Language:** Inserted word "parcel" in Nebraska section 1359 (1), in an effort to apply "primarily used" portion of this subsection to the entire parcel. Also added "commercial production" language in new subsection 1359(2).
2. **Purpose:** According to the Revenue Committee's statement dated February 2, 2006, the purpose of L.B. 808 was to limit the use of special valuation (a/k/a "Greenbelt") status, in order to prevent grant of preferential agricultural tax treatment to taxpayers not engaged in commercial farming. As a part of this limitation effort, it appears the Legislature intended to combat perceived abuse in the case of trophy homes built on acreages that received the agricultural and horticultural discount for portions of the acreage that did not include the farm home site. Additionally, although not directly relevant to the Taxpayer's appeal, L.B. 808 eliminated the burdensome recapture requirement that required assessors to keep two books on special value property, thereby possibly enhancing grant of valid special use applications.
3. **Outcome:** Hundreds of revocations of special valuation status by the Lancaster County Assessor, which led to a review of 501 revocation protests by the Lancaster County Board of Equalization ("BOE").⁸ The Lancaster County BOE overrode the Lancaster County Assessor on scores of these revocations in the case where the taxpayer maintained a Farm Services Agency (FSA) number and filed a Schedule F (i.e., farm business) for income tax purposes.⁹ Subsequently, relying on the modification of section 1359 by L.B. 808 and the legislative history

⁸ See, Revenue Committee Hearing Transcript, L.B. 777, February 20, 2008, pages 23 – 27.

⁹ Id.

relating thereto, the Nebraska Supreme Court upheld the Tax Equalization and Review Commission's reversal of the Lancaster County BOE's decisions with respect to several of these cases.¹⁰

4. **Note:** The debate on this legislation began in 2005 pursuant to the introduction of L.B. 407, at a time when residential valuations were increasing significantly pre-Great Recession (low rates, anyone qualifies) and just prior to record-setting growth in the valuation of agricultural land.

B. 2008 L.B. 777: Effective date January 1, 2009

1. **Language:** Inserted following highlighted language in Nebraska Statutes section 1359(1), in order to address the situation triggered by the passage of L.B. 808 referenced above that involved the disqualification of scores of whole parcels from special valuation status:

Agricultural land and horticultural land means a parcel of land, **excluding any building or enclosed structure and the land associated with such 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.

2. **Outcome:** Sarpy County "first acre" dispute whereby the County Assessor's Rural Land Model used \$64,000 as first acre farm home site valuation in 2009 and \$62,000 in 2010. According to page 32 of the 2010 Reports & Opinions of the Property Tax Administrator for Sarpy County, there were 837 rural improved parcels in the County in tax year 2010, all of which were apparently subject to the Rural Land Model.

III. VALUATION

The Taxpayer contends that the County Assessor's Rural Land Model found at Exhibit 10 is arbitrary or unreasonable because it contains alleged comparables that are dissimilar to the

¹⁰ *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 758 N.W.2d 363 (2008).

Subject Property. More specifically, the Taxpayer's appeal form submitted to the Commission states that the County's Rural Land Model uses comparables "from a different class than the subject acres; namely small saleable parcels with urban amenities," and the Taxpayer testified that two sales from Lienemann's subdivision used by the County to develop its Rural Land Model were of particular concern for comparability purposes. This Commissioner agrees with the Taxpayer for the reasons discussed below.

A. Extrapolation

As stated in Commissioner Salmon's opinion, the County's Appraiser testified that there are no sales in Sarpy County that represent the typical rural residential parcel, so the County Assessor's office developed the 2010 Rural Land Model to estimate the contribution of value of acres of land used or to be used as a farm home site or farm site. The two sales referenced by the Taxpayer from Lienemann's subdivision used by the County to develop its Rural Land Model include a 1.79 unimproved acre parcel and a 1.92 acre unimproved parcel.¹¹

The 1.79 acre unimproved parcel sold for \$110,000 on September 5, 2008, which amounts to \$61,453 per acre ($\$110,000/1.79$ acre).¹² The County's Rural Land Model makes several references to this \$61,453 per acre value in charts, tables and graphs.¹³ Of course, it is noted that this \$61,453 acre amount is close to the Rural Land Model's \$62,000 first acre valuation applied under Nebraska Statutes section 1359(3) throughout all of Sarpy County.¹⁴

The 1.92 acre Lienemann's subdivision unimproved parcel, on the other hand, sold for \$97,000 on June 29, 2009, or \$50,653 per acre ($\$97,000/1.92$ acre).¹⁵ Similar to the use of the 1.79 acre parcel referenced in the previous paragraph, the County's Rural Land Model makes several references to \$50,653 per acre in charts, tables and graphs.¹⁶

It is further noted that generally accepted mass appraisal techniques require assessors to "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the

¹¹ E10:2; E10:7; E11:1.

¹² E10:2.

¹³ E10:2; E10:4; E10:5; E10:7.

¹⁴ E10:2; E10:7; E11:1.

¹⁵ E10:2; E10:7; E11:1.

¹⁶ E10:2; E10:4; E10:5; 10:7.

subject property or eliminate that property as a comparable.”¹⁷ Page 7 of County Exhibit 10 references the two Lienemann’s subdivision sales as they relate to the Rural Land Model in terms of adjustments. As indicated by the “1” in the column labeled “MKT ADJ” of Exhibit 10, page 7, these sales are not adjusted.

This Commissioner understands that the County Assessor’s Appraiser testified that the County’s Rural Land Model did not use the two sales from Lienemann’s subdivision or other sales located in Sanitary Improvement Districts or close to cities to set its “base” values. Nonetheless, the County Assessor’s Appraiser testified that the County’s Rural Land Model used the two sales from Lienemann’s subdivision for “calibration” purposes in supporting its “base” \$62,000 first acre site value.

Because there are no sales in Sarpy County that represent the typical one acre rural residential parcel, the County’s Rural Land Model uses the process of extrapolation to determine its base \$62,000 first acre site value. *The Dictionary of Real Estate Appraisal* defines the word “extrapolation” as follows: “Calculating or estimating a quantity beyond the range of the data on which the calculation for estimate is based; projections that presume a continuation of observed trends, patterns, or relationships.”¹⁸

The County Appraiser’s testimony illustrates the use of extrapolation in connection with the development of the Rural Land Model’s base \$62,000 first acre site value. For instance, referencing graphs contained in the Rural Land Model set forth at Exhibit 10, pages 4 and 5, Commissioner Salmon’s opinion states that the County’s Appraiser testified that “[t]he trail of green triangles that represents a line through the data points was developed **after several tries** to obtain a best fit.” [Emphasis added.]

The Rural Land Model’s use of extrapolation to determine its base \$62,000 first acre agricultural land valuation throughout Sarpy County is arbitrary and unreasonable because the base value is supported by the unadjusted \$61,453 per acre value associated with the 1.79 Lienemann’s subdivision sale on September 5, 2008.¹⁹

¹⁷ *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2008, at 302.

¹⁸ *The Dictionary of Real Estate Appraisal*, 4th Edition, The Appraisal Institute, 2002, at 107.

¹⁹ It is noted that this sale occurred just prior to onset of the Great Recession when property values were increasing at historically high rates.

B. Dissimilar Comparable Sales – Location

The Taxpayer asserted that it is unreasonable and arbitrary to use the Lienemann’s subdivision sales as comparables to establish Rural Land Model values because they are located in an area of Sarpy County that is significantly different than the Subject Property area. In this regard, the County’s Appraiser testified that the Lienemann’s subdivision is in close proximity to the Shadow Lake Towne Center, which is a new mall development located on the southwest corner of Highway 370 & 72nd Street in the Papillion city limits. In contrast, the Subject Property is located several miles from the Shadow Lake Towne Center in the southwestern corner of Sarpy County, which the Taxpayer asserted differs significantly as compared to the Lienemann’s subdivision comparables in terms of its rural nature and in terms of proximity to commercial development.

Under Nebraska Statutes section 77-1371, “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and **location characteristics** and in their contribution to value.”²⁰ In addition, guidance issued by the International Association of Assessing Officers (“IAAO”) requires adjustments for location under the sales comparison approach.²¹

As discussed above, page 7 of County Exhibit 10 references the two Lienemann’s subdivision sales as they relate to the Rural Land Model. As indicated by the “1” in the column labeled “MKT ADJ” of Exhibit 10, page 7, these sales are not adjusted. Under the authority cited in the previous paragraph, this Commissioner finds that it is arbitrary and unreasonable to use unadjusted sales that are so close to vibrant commercial and residential development in Papillion for Rural Land Model calibration purposes to support the assessment of site acres several miles away in rural southwestern Sarpy County.

C. Dissimilar Comparable Sales – Size

Physical characteristics in terms of size must be considered under the sales comparison approach.²² Moreover, *The Appraisal of Real Estate* provides as follows:

²⁰ Neb. Rev. Stat. § 77-1371 (2012 Cum. Supp.) (Emphasis added.).

²¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at 179.

²² *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at 169-79, 205.

Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. 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 the highest and best use.²³

The evidence shows that the 1.92 acre and 1.79 acre Lienemann subdivision sales used to calibrate the County's Rural Land Model are closest in size to one acre for purposes of Nebraska Statutes section 1359(3). In other words, because sales of one acre farm home sites do not exist in Sarpy County, the Rural Land Model effectively uses the larger Lienemann's sales without adjustment (see discussion above) to support its base \$62,000 first acre valuation through the process of extrapolation.

This Commissioner finds that such extrapolation is unreasonable and arbitrary, especially when using unadjusted sales of larger parcels such as those from the Lienemann's subdivision in a commercially vibrant area to effectively value site acres several miles away in rural southwestern Sarpy County.

D. Dissimilar Comparable Sales – Amenities

Page 26 of the 2010 Reports & Opinions of the Property Tax Administrator for Sarpy County states as follows in response to the question whether rural home sites are valued the same as rural residential home sites:

Yes. Rural farm home sites and rural residential home sites are valued the same but, only to the degree that their marketability is similar. Often residential home sites in suburban areas will have additional amenities external to the subject property, such as, paved roads, street lights, etc.

Further, the IAAO's publication *Property Assessment Valuation* states as follows with respect to value creation through the anticipation of benefits in terms of amenities to be received in the future:

When the principle of anticipation is applied to a property developed for owner-occupied residential purposes, it implies that the value is based primarily on

²³ *The Appraisal of Real Estate*, 13th Ed., Appraisal Institute, 2008, at 212.

expected future amenities and pleasures derived from owning and occupying a residential property.²⁴

The statement above included in the 2010 Reports & Opinions of the Property Tax Administrator for Sarpy County, which was authored by the County Assessor's Office, admits that residential home sites in suburban areas often include additional amenities external to the subject property (such as, paved roads, street lights, etc.) as compared to rural farm home sites. Thus, in light of this admission and the IAAO guidance referenced above, this Commissioner is persuaded that the current and expected future amenities in connection with the two Lienemann's subdivision sales are not comparable without adjustment to the Subject Property located several miles away in rural southwestern Sarpy County.

E. Consideration of Site Valuation Alternatives

The International Association of Assessment Officers' "Standard on Mass Appraisal of Real Property" provides as follows:

The sales comparison approach is the primary approach to land valuation and is always preferred when sufficient sales are available. **In the absence of adequate sales, other techniques used in mass appraisal include allocation, abstraction, anticipated use, capitalization of ground rents, and land residual capitalization.**²⁵

This IAAO Mass Appraisal Standard applies to the instant case because the County's Appraiser testified that there are no sales in Sarpy County that represent the typical farm home site. Consequently, the IAAO Mass Appraisal Standard directs the County to consider alternative techniques such as those listed above.

For example, the IAAO defines the allocation method as follows: "A method used to value land, in the absence of vacant land sales, by using a typical ratio of land to improvement value."²⁶ There is no evidence that the County utilized the allocation method or other alternatives referenced above for purposes of corroborating its Rural Land Model.

IV. CONCLUSION

²⁴ *Property Assessment Valuation*, 3rd Ed., 2010, at 34.

²⁵ "Standard on Mass Appraisal of Real Property," International Association of Assessment Officers (Approved 2002 and re-approved in 2011 and 2012) (Emphasis added.).

²⁶ *Id.*

This Commissioner is mindful that County Assessors throughout Nebraska confront attempts by landowners to acquire unjustified discounted property tax treatment under the statutes governing agricultural/horticultural and special valuation property. Respectfully, however, this Commissioner finds that it is arbitrary and unreasonable to apply a model throughout Sarpy County that is derived through the use of extrapolation and supported by sales of parcels near vibrant commercial activity without sufficient adjustments.

Thomas D. Freimuth, Commissioner