

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Anne M. Koch,
Appellant,

Case No: 10A-82 & 10A-083
Decision

v.

Sarpy County Board of Equalization,
Appellee.

For the Appellant:
Anne M. Koch

For the Appellee:
Kerry A. Schmid,
Assistant Sarpy County Attorney

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

I. THE SUBJECT PROPERTY

There are two Subject Properties, the first parcel in Case No. 10A-82 is an unimproved 1.57 acre parcel and the parcel in Case No. 10A-83 is a 81.17 acre parcel improved with a residence. Both parcels are located in Sarpy County, Nebraska. The Subject Properties are qualified for special valuation. The lands used for agricultural and horticultural purposes 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 property in Case No. 10A-82 is found at Exhibit 3 and the property record card for is found at Exhibit 6. The legal description of the property in Case No. 10A-83 is found at Exhibit 3 and the property record card for is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the property in Case No 10A-82 was \$40,028 for tax year 2010, and the assessed value of the property in Case No. 10A-83 was \$317,439. Anne M. Koch (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of the parcel in Case No. 10A-82 of \$3,362 and \$293,439 for the parcel in Case No. 10A-83. The County Board determined that the assessed value for tax year 2010 of the parcel in Case No. 10A-82 was \$40,028 and \$317,439 for the parcel in Case No. 10A-83. (E1 & E3 in each case).

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of Exhibits 1 through 37, Exhibits 40 through 43, and Exhibits 45 through 53 in Case No. 10A-82 and in Case No. 10A-083 Exhibits 1 through 37, Exhibits 30 through 41, and Exhibits 43 through 50. The Commission held a consolidated hearing on October 13, 2011.

Anne M. Koch was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Kerry A. Schmid, Deputy County Attorney for Sarpy County, Nebraska, was present as legal counsel for the County Board.

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, are not Agricultural or Horticultural land. The parcel in Case No. 10A-082, does not have any improvements, but it is maintained as a farm site in conjunction with a parcel of land it surrounds and which is owned by the Taxpayer, Anne M. Koch.

The Taxpayer stated that one of the reasons for her appeal is the assessment of the acres of the subject property classified as a farm home site and farm site and therefore not Agricultural or Horticultural land. The Taxpayer 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 alleged that the assessed valuation of the site acres is in excess of current market value under current legal zoning and use. 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 and is based upon hypothetical assumption that is pure speculation.

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 is based on a hypothetical assumption that site acres can be sold separately from the agricultural and horticultural acres on the same parcel. The Taxpayer alleges that the rural land valuation model values a single acre of the subject property separately from the remaining acres of the property which does not conform to current legal zoning and use of the subject property. Nebraska Law requires the portion of a rural property that is used as a farm home site or farm site not be valued as agricultural or horticultural land.¹ This means that the County has to value the site acres differently than the remaining acres used for agricultural or horticultural purposes, in spite of the fact that they are both parts of the same parcel of land. Much like the requirement that agricultural or horticultural land subject to special valuation must be valued as if its value were not impacted by non-agricultural influences², Nebraska Law requires the assessor to determine actual value for assessment purposes of the site acres separate from the agricultural and horticultural acres where

¹ See, Neb. Rev. Stat. §77-1359 (Reissue 2009)

² See, Neb. Rev. Stat. §77-1343 et. seq. (Reissue 2009)

an actual market does not exist, requiring the assessor to develop a model that reflects this hypothetical market. In other words the Assessor is required by law to determine a separate value for a single acre designated as a farm homesite or farm site, even though there may be no market for a farm homesite without the accompanying agricultural or horticultural land, due to zoning or other factors. The Taxpayer offered evidence and testimony to demonstrate that the Subject Properties and other properties were subject to zoning requirements but failed to demonstrate or otherwise quantify how those zoning requirements would impact the actual or assessed value of the Subject Properties or other properties.

The County's Appraiser testified that there are no sales in Sarpy County that represent the typical rural residential parcel so the 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. (E9). 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 all of these sales were not used to develop the Rural Land Model values, as well as the values determined by the Rural Land Model. (E9:4-5).

“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 the second, third and fourth acre, and \$6,200 for each succeeding site acre. 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 also argued that the assessed values of the subject properties were not equalized with other comparable properties, and offered the Property Record Files for several other properties in the county in support of this argument.³ The Commission must again note that the Taxpayer has presented no evidence of actual value for any of these properties offered as comparable to allow the Commission to compare the ratio of assessed to actual value for the Subject Properties and comparable properties. Additionally the assessed values of the land

³ See for example Ex. 26 – Ex 35 in Case No. 10A-82 .

component of the subject properties appear to be determined in the same way as the assessed values of the other properties, where the properties are comparable (i.e. acres classified as site, acres classified as special valuation).

The Taxpayer offered evidence and testimony to demonstrate that the Subject Properties and other properties were subject to zoning requirements but failed to demonstrate or otherwise quantify how those zoning requirements would impact the actual or assessed value of the Subject Properties or other properties. Without evidence of an impact of zoning requirements on the actual or assessed values of the Subject Properties the Commission is unable to evaluate the impact these zoning restrictions might have on the actual value of any parcel or the manner in which those restrictions might affect consideration of the equalized value of the subject properties.

The Taxpayer has failed to demonstrate how the valuation of the Subject Properties when compared with valuations placed on similar property are grossly excessive and are the result of systematic will or failure of a plain legal duty, and not mere error of judgment.

VI. 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.

VII. 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 affirmed⁴.

⁴ 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.

2. The assessed value of the Subject Properties for tax year 2010 are as follows:

Case No. 10A-082

Land: \$ 40,028
Total: \$ 40,028

Case No. 10A-083

Land: \$214,125
Improvements: \$103,314
Total: \$317,439

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 16, 2013

Signed and Sealed: August 16, 2013

Nancy J. Salmon, Commissioner

SEAL

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.

CONCURRING OPINION BY PRESIDING HEARING OFFICER THOMAS D. FREIMUTH:

I find that the County's model for determining the valuation of the farm home site and farm site acres associated with the Subject Properties is arbitrary and unreasonable. Because I find that the Taxpayer did not provide sufficient evidence to quantify the impact of zoning or other factors for valuation or equalization purposes, however, I concur with Commissioner Salmon's decision to affirm the Sarpy County Board's determination regarding the actual value of the Subject Properties for tax year 2010.

I. OVERVIEW

The Taxpayer did not dispute the contribution to value made by the lands classified as agricultural in either appeal or the improvement value of the residence in Case No. 10A-83. The contention of the Taxpayer is that the contribution to value by the acres categorized as farm home site and farm site is excessive.

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.**"⁵ Accordingly, because the portion of the Subject Properties designated as "site" is not agricultural and horticultural land, it is assessed at 100% of actual value (as opposed to 75% of actual value in the case of agricultural or horticultural land).⁶

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

⁵ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009) [Emphasis added.].

⁶ See, Neb. Rev. Stat. §77-201 (Reissue 2009).

(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.⁷

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 for each appeal to value the Taxpayer's farm home site and farm acres.⁸ The County determined that the value of the 1 acre farm home site in Case No. 10A-83 amounted to \$62,000, thereby rejecting the referee's \$20,000 recommendation.⁹ The County also determined that the value of the 2.1 acre farm site in Case No. 10A-83 amounted to \$20,100, thereby rejecting the referee's \$4,462 recommendation.¹⁰ With respect to Case No. 10A-82, the County determined that the value of the .61 farm site acres amounted to \$37,820 (\$62,000 x .61 acres), thereby rejecting the referee's \$1,403 recommendation (\$2,300 "dry crop" value x .61 acres).¹¹

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 for each appeal, 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.

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.

⁷ Neb. Rev. Stat. §77-1359 (Reissue 2009).

⁸ See, E1:1; E2; E10 for each appeal.

⁹ See, E5 & E6:4 for Case No. 10A-83.

¹⁰ See, E5 & E6:4 for Case No. 10A-83.

¹¹ See, E5 & E6:2 for Case No. 10A-82.

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").¹² 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.¹³ Subsequently, relying on the modification of section 1359 by L.B. 808 and the legislative history 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.¹⁴
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.

¹² See, Revenue Committee Hearing Transcript, L.B. 777, February 20, 2008, pages 23 – 27.

¹³ *Id.*

¹⁴ *Agena v. Lancaster County Board of Equalization*, 276 Neb. 851, 758 N.W.2d 363 (2008).

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

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. As also stated in Commissioner Salmon's opinion, 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."

While a “clean” report regarding base value adjustments was unavailable, I note that two sales from Lienemann’s subdivision were used by the County Assessor to develop its Rural Land Model, including a 1.79 unimproved acre parcel and a 1.92 acre unimproved parcel.¹⁵

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).¹⁶ The County’s Rural Land Model makes several references to this \$61,453 per acre value in charts, tables and graphs.¹⁷ 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.¹⁸

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).¹⁹ 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.²⁰

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 subject property or eliminate that property as a comparable.”²¹ Page 7 of County Exhibit10 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 Exhibit10, page 7, these sales are not adjusted.

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

¹⁵ E10:2; E10:7.

¹⁶ E10:2.

¹⁷ E10:2; E10:4; E10:5; E10:7.

¹⁸ E2:1; E5:4; E10:2; E10:7.

¹⁹ E10:2; E10:7.

²⁰ E10:2; E10:4; E10:5; 9:7.

²¹ *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2008, at 302.

which the calculation for estimate is based; projections that presume a continuation of observed trends, patterns, or relationships.”²²

The County’s use of extrapolation in connection with the development of the Rural Land Model’s base \$62,000 first acre site value is illustrated in Commissioner Salmon’s majority opinion. Referencing graphs contained in the Rural Land Model set forth at Exhibit 10, pages 4 and 5, Commissioner Salmon’s opinion states 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, 2008.²³

B. Dissimilar Comparable Sales – Location

I find that it is unreasonable and arbitrary to use the Lienemann’s subdivision sales as comparables to calibrate or otherwise support 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 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.

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.”²⁴ In addition, guidance issued by the International Association of Assessing Officers (“IAAO”) requires adjustments for location under the sales comparison approach.²⁵

²² *The Dictionary of Real Estate Appraisal*, 4th Edition, The Appraisal Institute, 2002, at 107.

²³ It is noted that this sale occurred just prior to onset of the Great Recession when property values were increasing at historically high rates.

²⁴ Neb. Rev. Stat. § 77-1371 (2012 Cum. Supp.) (Emphasis added.).

²⁵ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at 179.

As discussed above, page 7 of County Exhibit10 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 Exhibit10, 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.

C. Dissimilar Comparable Sales – Size

Physical characteristics in terms of size must be considered under the sales comparison approach.²⁶ Moreover, *The Appraisal of Real Estate* provides as follows:

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.²⁷

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.

²⁶ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at 169-79, 205.

²⁷ *The Appraisal of Real Estate*, 13th Ed., Appraisal Institute, 2008, at 212.

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 International Association of Assessing Officers' (IAAO) publication entitled *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 expected future amenities and pleasures derived from owning and occupying a residential property.²⁸

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, acknowledges 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 acknowledgment 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.

E. Dissimilar Alleged Comparable Sales – Zoning Differences

The Appraisal of Real Estate provides as follows for purposes of the sales comparison approach:

In the valuation of vacant land, zoning is one of the primary determinants of the highest and best use of the property because it serves as the test of legal permissibility. Thus, zoning or the reasonable probability of a zoning change is typically a primary criterion in the selection of market data. When comparable properties with the same zoning as the subject are lacking or scarce, parcels with slightly different zoning but a highest and best use similar to that of the subject

²⁸ *Property Assessment Valuation*, 3rd Ed., 2010, at 34.

may be used as comparable sales. These sales may have to be adjusted for differences in utility if the market indicates that this is appropriate. On the other hand, a difference in the uses permitted under two zoning classifications does not necessarily require an adjustment if the parcels have the same use.²⁹

Based on the evidence, it is unclear whether the County sufficiently considered zoning in connection with the development and use of its Rural Land Model. I agree with Commissioner Salmon's opinion that the Taxpayer did not provide sufficient clear and convincing evidence to quantify the impact of zoning for valuation or equalization purposes.

F. 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.**³⁰

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."³¹ 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

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

²⁹ *The Appraisal of Real Estate*, 13th Ed., Appraisal Institute, 2008, at 341 – 342.

³⁰ "Standard on Mass Appraisal of Real Property," International Association of Assessment Officers (Approved 2002 and re-approved in 2011 and 2012) (Emphasis added.).

³¹ *Id.*

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