

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Eiger Corp.,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 13C 229, 14C 035, 15C 0371 &  
16C 0038

Case Nos: 13C 232 & 14C 040

Case Nos: 13C 233 & 14C 041

Case Nos: 13C 234 & 14C 042

Case Nos: 13C 235 & 14C 043

Case Nos: 13C 236 & 14C 044

Case Nos: 13C 237 & 14C 045

Case Nos: 13C 240 & 14C 049

Case Nos: 13C 241 & 14C 050

Case Nos: 13C 243 & 14C 052

Case Nos: 13C 244 & 14C 053

Case Nos: 13C 245 & 14C 054

Decision and Order Affirming the  
Determination of the Lancaster County  
Board of Equalization

**For the Appellant:**

Jarrod P. Crouse,  
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**For the Appellee:**

Kayla N. Hathcote,  
Deputy Lancaster County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Properties are twelve unimproved commercial parcels located in Lancaster County. The legal description of the parcels are found at Exhibits 1 through 26. The property record cards for the Subject Properties are found at Exhibits 53 through 78.

**II. PROCEDURAL HISTORY**

Eiger Corp (Taxpayer), protested the assessed values of the Subject Properties for tax years 2013 and 2014 to the Lancaster County Board of Equalization (County Board). The Taxpayer protested the assessed values of one of the Subject Properties for tax years 2015 and 2016. A

summary of the assessed values, Taxpayer’s requested values from their protests to the County Board, and the County Board’s final determinations is found in the following table:

<b>Case No</b>	<b>Assessed Value</b>	<b>Requested Value</b>	<b>County Board Value</b>
13C 229 <sup>1</sup>	\$313,900	\$97,319	\$313,900
14C 035 <sup>2</sup>	\$313,900	\$97,319	\$313,900
15C 371 <sup>3</sup>	\$156,900	\$50,000	\$112,500
16C 038 <sup>4</sup>	\$112,500	\$50,000	\$112,500
13C 232 <sup>5</sup>	\$681,000	\$293,318	\$681,000
14C 040 <sup>6</sup>	\$681,000	\$293,318	\$681,000
13C 233 <sup>7</sup>	\$1,357,600	\$534,843	\$1,357,600
14C 041 <sup>8</sup>	\$1,357,600	\$534,843	\$1,357,600
13C 234 <sup>9</sup>	\$1,227,400	\$449,916	\$1,227,400
14C 042 <sup>10</sup>	\$1,227,400	\$449,916	\$1,227,400
13C 235 <sup>11</sup>	\$1,064,500	\$411,087	\$1,064,500
14C 043 <sup>12</sup>	\$1,064,500	\$411,087	\$1,064,500
13C 236 <sup>13</sup>	\$661,300	\$275,017	\$661,300
14C 044 <sup>14</sup>	\$661,300	\$275,017	\$661,300
13C 237 <sup>15</sup>	\$259,100	\$107,745	\$259,100
14C 045 <sup>16</sup>	\$259,100	\$107,745	\$259,100
13C 240 <sup>17</sup>	\$262,500	\$84,774	\$262,500

<sup>1</sup> E1:1 (Assessed and County Board Value); E27:5 (Requested Value).

<sup>2</sup> E2:1 (Assessed and County Board Value); E28:5 (Requested Value).

<sup>3</sup> E3:1 (Assessed and County Board Value); E29:1 (Requested Value).

<sup>4</sup> E4:1 (Assessed and County Board Value); E30:1 (Requested Value).

<sup>5</sup> E5:1 (Assessed and County Board Value); E31:5 (Requested Value).

<sup>6</sup> E6:1 (Assessed and County Board Value); E32:5 (Requested Value).

<sup>7</sup> E7:1 (Assessed and County Board Value); E33:5 (Requested Value).

<sup>8</sup> E8:1 (Assessed and County Board Value); E34:5 (Requested Value).

<sup>9</sup> E9:1 (Assessed and County Board Value); E35:5 (Requested Value).

<sup>10</sup> E10:1 (Assessed and County Board Value); E36:5 (Requested Value).

<sup>11</sup> E11:1 (Assessed and County Board Value); E37:5 (Requested Value).

<sup>12</sup> E12:1 (Assessed and County Board Value); E38:5 (Requested Value).

<sup>13</sup> E13:1 (Assessed and County Board Value); E39:5 (Requested Value).

<sup>14</sup> E14:1 (Assessed and County Board Value); E40:5 (Requested Value).

<sup>15</sup> E15:1 (Assessed and County Board Value); E41:5 (Requested Value).

<sup>16</sup> E16:1 (Assessed and County Board Value); E42:5 (Requested Value).

<sup>17</sup> E17:1 (Assessed and County Board Value); E43:5 (Requested Value).

Case No	Assessed Value	Requested Value	County Board Value
14C 049 <sup>18</sup>	\$262,500	\$84,774	\$262,500
13C 241 <sup>19</sup>	\$227,500	\$77,126	\$227,500
14C 050 <sup>20</sup>	\$227,500	\$77,126	\$227,500
13C 243 <sup>21</sup>	\$1,531,000	\$524,758	\$1,531,000
14C 052 <sup>22</sup>	\$1,531,000	\$524,758	\$1,531,000
13C 244 <sup>23</sup>	\$1,035,900	\$337,340	\$1,035,900
14C 053 <sup>24</sup>	\$1,035,900	\$337,340	\$1,035,900
13C 245 <sup>25</sup>	\$521,000	\$168,237	\$521,000
14C 054 <sup>26</sup>	\$521,000	\$168,237	\$521,000

The Taxpayer appealed the determinations of County Board to the Tax Equalization and Review Commission (Commission). Prior to the October 25, 2017, hearing the parties exchanged exhibits and submitted a pre-hearing conference report, as ordered by the Commission. In the pre-hearing conference report the parties stipulated to the receipt of the exchanged exhibits. The Commission held a hearing on October 25, 2017, at which evidence and argument were received.

### III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.<sup>27</sup> 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

<sup>18</sup> E18:1 (Assessed and County Board Value); E44:5 (Requested Value).

<sup>19</sup> E19:1 (Assessed and County Board Value); E45:5 (Requested Value).

<sup>20</sup> E20:1 (Assessed and County Board Value); E46:5 (Requested Value).

<sup>21</sup> E21:1 (Assessed and County Board Value); E47:5 (Requested Value).

<sup>22</sup> E22:1 (Assessed and County Board Value); E48:5 (Requested Value).

<sup>23</sup> E23:1 (Assessed and County Board Value); E49:5 (Requested Value).

<sup>24</sup> E24:1 (Assessed and County Board Value); E50:5 (Requested Value).

<sup>25</sup> E25:1 (Assessed and County Board Value); E51:5 (Requested Value).

<sup>26</sup> E26:1 (Assessed and County Board Value); E52:5 (Requested Value).

<sup>27</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. 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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>31</sup>

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>32</sup> 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.<sup>33</sup>

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.”<sup>34</sup> 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.”<sup>35</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>36</sup>

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<sup>28</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>29</sup> *Id.*

<sup>30</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>31</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>32</sup> 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).

<sup>33</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>34</sup> Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

<sup>35</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>36</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. 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.<sup>37</sup>

“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.”<sup>38</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>39</sup> 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.<sup>40</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>41</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>42</sup>

### B. Summary of the Evidence

The Taxpayer alleged that the Subject Properties had received a “developers discount” in years prior to 2013. It claimed that the County Assessor applied a discounted cash flow analysis or “developer’s discount” to the Subject Properties. In 2013 and 2014, the discount was not applied to the Subject Properties. The Taxpayer now claims that the failure to apply the discount in 2013 and 2014 was unreasonable and arbitrary. The Taxpayer further alleged that the discounted value of the Subject Properties was the actual or fair market value of the Subject Properties for tax year 2013 and 2014. Additionally the Taxpayer alleged that the assessed value of the Subject Properties for tax years 2015 and 2016 was excessive.

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<sup>37</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>38</sup> *Id.*

<sup>39</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>40</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>41</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>42</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

The Taxpayer offered an appraisal report and appraisal addendum prepared by Kevin M. Kroger, regarding the values of the Subject Properties (the Valuation Services Appraisal).<sup>43</sup> The Valuation Services Appraisal and addendum were received into evidence by the Commission. Kroger also provided testimony at the hearing regarding the Subject Properties and the Valuation Services Appraisal. The Taxpayer has, therefore, through competent evidence, rebutted the presumptions that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations.<sup>44</sup> Because the Taxpayer has rebutted the presumptions, “the reasonableness of the valuation[s] fixed by the board of equalization becomes a question of fact based upon all of the evidence presented.”<sup>45</sup>

The Valuation Services Appraisal first utilizes the sales comparison approach to estimate the value of each individual lot of the Subject Property through a comparison to other lots that have sold. It calls the value of each individual lot based on the sales comparison approach the “aggregate retail value” which it then states “should not be confused with or in any way perceived to be the property’s market value or actual value for assessment purposes.”<sup>46</sup>

The Valuation Services Appraisal then incorporated the results of the sales comparison approach into a discounted cash flow analysis to determine the value of the Subject Properties if sold in a single transaction as a single economic unit. The Valuation Services Appraisal arrives at a discount factor of 49% to apply to the sales comparison approach values to arrive at its value determination for the Subject Properties. While the Valuation Services Appraisal values the Subject Properties as a single economic unit, Kroger testified that the Subject Properties were not likely to sell as a single economic unit but that they were likely to sell as individual parcels for commercial development and use.

The County Board offered the testimony of Chief Administrative Deputy Assessor/Register of Deeds Scott Gains (the Deputy Assessor). He testified that the Assessor’s office did apply a “developers discount” to some properties in Lancaster County for tax years prior to 2013. The Deputy Assessor testified that a “developers discount” was not applied to any parcel of property

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<sup>43</sup> Exhibit 87 and 89

<sup>44</sup> See, *JQH La Vista Conf. Ctr. V. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 127, 825 N.W.2d 447 (2013).

<sup>45</sup> *Id.*

<sup>46</sup> Exhibit 87 page 17.

in Lancaster County for the 2013 and 2014 tax years. The Deputy Assessor testified that starting in 2015 the Assessor's office applied a developer's discount.

The County Board offered the testimony of Cliff Bybee, a Senior Commercial Appraiser for the Lancaster County Assessor's Office (the County Appraiser). The County Appraiser testified regarding the process for assessing vacant commercial land in Lancaster County. The County Appraiser testified that a discount was applied to vacant commercial properties for tax years 2015 and 2016 based on a statutory change, but was not applied for the 2013 and 2014 tax years due to an administrative determination based on an opinion provided by the Lancaster County Attorney's office.<sup>47</sup> The County Appraiser testified that the assessed values of the Subject Properties for tax years 2013 and 2014 were based on a model which derived values from sales of vacant commercial land and the characteristics of the Subject Properties to arrive at the assessed values. The County Appraiser testified that for tax years 2015 and 2016 the Subject Properties were assessed based on a model which derived values from sales of vacant commercial land and the characteristics of the Subject Properties and then the Assessor's Office applied a developer's discount, to arrive at the assessed value.

The County Board offered an appraisal report prepared by Cody Gerdes, regarding the values of the Subject Properties (the Great Plains Appraisal).<sup>48</sup> The Great Plains Appraisal was received into evidence by the Commission. Gerdes provided testimony at the hearing regarding the Subject Properties and the Great Plains Appraisal. The Great Plains Appraisal utilizes the sales comparison approach to estimate the value of each individual lot of the Subject Property through a comparison to other commercial lots that have recently sold. Gerdes testified that the Subject Properties would likely sell as individual parcels for commercial development and use. Gerdes further testified that he had personally appraised 4 or 5 parcels located in the same development as the Subject Properties and that his company, Great Plains Appraisal, had appraised 10-12 properties in the same development as the Subject Properties. For parcel 3 the Great Plains Appraisal further utilized lease data for similar lots located in Lancaster County to support its valuation conclusion for parcel 3. Gerdes testified that for tax years 2015 and 2016 he discounted the values determined using the sales comparison approach by 50% pursuant to the

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<sup>47</sup> Exhibit 90

<sup>48</sup> Exhibit 87 and 89

policy of the Lancaster County Assessor's Office. Gerdes testified that the discounted cash flow analysis is appropriate for determining the "investment value" for a development but not the market value. Gerdes testified that in his experience, lenders who request the "investment value" for purposes of financing also request the market value of the properties.

### **Tax Years 2013 and 2014**

The Taxpayer first alleges that because the County applied a "developers discount" when determining assessed values for the Subject Properties for tax year 2012 and did not apply the same discount in tax years 2013 and 2014, the County's determination is unreasonable and arbitrary. Nebraska Statutes require that real property subject to taxation be valued at its actual value unless the real property meets the definition of agricultural or horticultural land, or historically significant real property.<sup>49</sup> Nebraska Statutes section 77-112 defines "actual value":

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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. 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 include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.<sup>50</sup>

There is nothing in statute or case law that requires a county assessor or county board of equalization to value properties using the same methodology in a subsequent tax year as was applied in the prior tax year. The statutes simply require that the actual value be determined using professionally accepted mass appraisal methods. Nebraska law requires an assessor to prepare an assessment roll each year.<sup>51</sup> The Nebraska Supreme Court has held that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>52</sup> For these reasons, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>53</sup> The

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<sup>49</sup> Neb. Rev. Stat. § 77-201 (Reissue 2009).

<sup>50</sup> Neb. Rev. Stat. § 11-112 (2016 Cum. Supp.)

<sup>51</sup> Neb. Rev. Stat. § 77-1303 (2012 Cum. Supp.).

<sup>52</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>53</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).



Taxpayer's contention that utilizing a different valuation methodology from one year to the next is unreasonable and arbitrary is not supported by law or the facts of these appeals.

The Taxpayer next alleges that the actual value of the Subject Properties for tax years 2013 and 2014 are the values as determined using the developer's discount. Language regarding the specific use of a developer's discount was added to the Nebraska Statutes effective for tax year 2015, and that will be applied later in this opinion, but for tax years prior to 2015 the statutes do not explicitly address the use of a developer's discount.<sup>54</sup> The use of a developer's discount to determine the actual value of real property for ad valorem tax purposes has not been addressed by Nebraska Courts. However, the issue has been addressed by several courts in other jurisdictions.<sup>55</sup> Additionally, the Commission has previously held that the use of a discounted cash flow analysis, or application of a developer's discount, to determine the assessed value of real property violated the principles and requirements of Nebraska law.<sup>56</sup> The Commission recognizes that the holdings and reasoning from other jurisdictions are persuasive only, and not controlling. However, the Commission finds these holdings and reasoning instructive.

While it is true that a developer's discount is a generally accepted appraisal technique, the applicability of this technique is also limited. "The [subdivision development analysis] technique is most useful for reporting the market value for a group of subdivision lots, whether existing or proposed. The method uses what is known as a *bulk sales* scenario to develop the value of all lots to one purchaser."<sup>57</sup> In other words, the discounted cash flow analysis, or

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<sup>54</sup> See, Neb. Rev. Stat. §77-1314(2016 Cum. Supp.)

<sup>55</sup> See, *Tramburelli Properties Association v. Borough of Creskill*, 308 N.J. Super. 326, 705 A.2d 1270 (N.J. Super. Add. Div. 1998) (holding that the use of an absorption discount did not violate New Jersey ad valorem real property tax scheme in the limited instances where the property was assessed at a highest and best use of residential but was currently used for another use, and where the parcel had yet to be legally subdivided into individual lots); *Board of Equalization of Salt Lake County v. Utah State Tax Commissioner ex re. Benchmark, Inc.*, 864 P.2d 882 (1993) (holding that use of an absorption discount violated both Utah Constitutional provisions for uniformity and the statutory scheme for the application of ad valorem taxes); *Mathais v. Department of Revenue of the State of Oregon*, 312 Or. 50, 817 P.2d 272 (1991) (holding that a statutory scheme which can best be described as permitting the use of a discounted cash flow analysis to value certain undeveloped properties for ad valorem tax purposes violated the Oregon Constitutional provisions for uniformity); *Edward Rose Building Company v. Independence Township*, 436 Mich. 620, 462 N.W.2d 325 (1990) (holding a wholesale discount would violate the state's constitutional requirement for uniformity); *Hixon v. Lario Enterprises, Inc.*, 257 Kan. 377, 892 P.2d 507 (1995) (holding use of a developer's discount would violate the statutory scheme for valuing property for ad valorem tax purposes); *St. Leonard Shores v. Supervisor of Assessments of Calvet County*, 307 Md. 441, 514 A.2d 1215 (1985) (rejecting the use of a developer's discount to value property for ad valorem tax purposes).

<sup>56</sup> See, *Springfield Lake Development Co., LLC v. Sarpy*, 10R-141-148, 11R-224-230 & 12 R-283-289 (March 31, 2014), *CAE Enterprises LLC v Sarpy*, 08C-002 (July 14, 2009); *Palisades Development LLC v Sarpy*, 08R-863-868 (August 11, 2010); *Savanna Shores Development LLC v Sarpy*, 08R-276-287 (August 11, 2010), *CAE Enterprises LLC v. Sarpy*, 08C-002 (July 14, 2009). (Available on the Commission's website at [terc.nebraska.gov](http://terc.nebraska.gov)).

<sup>57</sup> *The Appraisal of Real Estate*, 13<sup>th</sup> Ed., Appraisal Institute (2008) at 370.

developers' discount does not value a parcel individually, but instead determines the aggregate value of a group of parcels to a developer or investor.

Nebraska Statutes require that real property subject to taxation be valued at its actual value unless the real property meets the definition of agricultural or horticultural land, or historically significant real property.<sup>58</sup> Actual value of real property for purposes of taxation means the market value of real property *in the ordinary course of trade*.<sup>59</sup> Both Kroger and Gerdes testified that in the ordinary course of trade the Subject Properties would be sold as individual parcels for commercial development and not as a single economic unit in a single transaction. Both the Valuation Services Appraisal and the Great Plains Appraisal utilize recent sales of individual vacant commercial land and information regarding sales of individual vacant commercial land were offered as evidence in this hearing.<sup>60</sup> Kroger testified that based on his experience for commercial development sales of an entire development as a single unit seldom happen but that for residential developments this type of single economic unit sales happen quite a bit. This testimony is consistent with the fact that there are no sales of commercial developments such as the one that contains the Subject Properties as a single economic unit to a single buyer in the evidence presented to the Commission.

Additionally, when discussing the strength of a value indication derived from a discounted cash flow analysis, the appraisal literature states that, “[t]he value indication is most persuasive when the sales comparison method provides additional support.”<sup>61</sup> In other words, a discounted cash flow analysis should be supported by the sales comparison approach. The Valuation Services Appraisal’s final determination of value is not supported by the sales comparison approach performed by the County Assessor, the Great Plains Appraisal, or even the sales comparison approach contained in the Valuation Services Appraisal.

The Commission finds that the determination of value made by the County Assessor and approved by the County Board is the best evidence of the Subject Properties’ actual values for tax years 2013 and 2014. These values are supported by the determination of actual value in the

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<sup>58</sup> Neb. Rev. Stat. § 77-201 (Reissue 2009).

<sup>59</sup> Neb. Rev. Stat. §11-112 (2016 Cum. Supp.)

<sup>60</sup> See, Exhibits 84, 85, 86 and 87.

<sup>61</sup> The Appraisal of Real Estate, 13<sup>th</sup> Ed., Appraisal Institute (2008) at 370.

Great Plains Appraisal as well as the determination of value for the Subject Properties made using the sales comparison approach in the Valuation Services Appraisal.

### **Tax Years 2015 and 2016**

The Nebraska Legislature enacted Neb. Rev. Stat. §77-1314 effective for the 2015 assessment year. This statute requires assessors to utilize the income approach to value including the discounted cash flow analysis when determining assessed value for two or more vacant or unimproved lots owned by the same person and held for sale.<sup>62</sup> If an assessor believes that value determined in this manner does not result in a valuation at actual value then the statute provides a procedure for the county board to petition for an order allowing an alternative valuation method to be utilized.<sup>63</sup>

For tax years 2015 and 2016 the County Assessor utilized the income approach, including the discounted cash-flow analysis to determine the assessed value of the Subject Properties. The County Assessor did not present facts and circumstances to the County Board to demonstrate that the income approach including the discounted cash-flow analysis did not result in a valuation at actual value and the County Board did not petition to utilize another professionally established mass appraisal technique for tax year 2015 or 2016. The Deputy Assessor and the County Appraiser both testified that a developers discount was applied for the 2015 and 2016 tax years. Additionally the County Board did not provide notice of a higher taxable value and the intent to offer proof to support that higher value as required by the Commission's Rules and Regulations.<sup>64</sup> The Commission will therefore consider the values determined using a developers discount for tax years 2015 and 2016.

The Taxpayer appealed the assessed value of only one parcel for tax years 2015 and 2016 (Parcel 3). The County Board determined the value of the Parcel 3 for tax years 2015 and 2016 as \$112,500.<sup>65</sup> This value is reflected in the Property Record Files for the Subject Property for tax years 2015 and 2016.<sup>66</sup>

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<sup>62</sup> Neb. Rev. Stat. §77-1314(1)(2016 Cum. Supp.)

<sup>63</sup> Neb. Rev. Stat. §77-1314(2)(2016 Cum. Supp.)

<sup>64</sup> Title 442 Neb. Admin. Code ch 5 §016.02A (6/11)

<sup>65</sup> Exhibits 3 & 4.

<sup>66</sup> Exhibits 55 & 56.

The Taxpayer's presented the Valuation Services Appraisal as evidence of value for Parcel 3 for tax years 2015 and 2016. The Valuation Services Appraisal determined that the value of Parcel 3 for tax years 2015 and 2016 was \$120,900 and \$123,900 respectively utilizing the discounted cash flow analysis.<sup>67</sup> The Great Plains Appraisal determined that the value of parcel 3 for both tax years 2015 and 2016 was \$158,000.<sup>68</sup>

While the Taxpayer has alleged that the assessed value of Parcel 3 is too high for tax years 2015 and 2016, all of the evidence of value presented to the Commission regarding Parcel 3 for tax years 2015 and 2016 indicates that the assessed value is that determined by the County Board or some value higher than the assessed value determined by the County Board. The Commission therefore determines that the Taxpayer has failed to demonstrate that the determination of the County Board was unreasonable, arbitrary, or incorrect.

## **V. CONCLUSION**

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2013, 2014, 2015 and 2016 are affirmed.<sup>69</sup>

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<sup>67</sup> E87:97 and E89:1.

<sup>68</sup> E59:173.

<sup>69</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

2. The assessed values of the Subject Property are:

Case No. 13C 229:	\$ 313,900
Case No. 14C 035:	\$ 313,900
Case No. 15C 0371:	\$ 112,500
Case No. 16C 0038:	\$ 112,500
Case No. 13C 232:	\$ 681,000
Case No. 14C 040:	\$ 681,000
Case No. 13C 233:	\$1,357,600
Case No. 14C 041:	\$1,357,600
Case No. 13C 234:	\$1,227,400
Case No. 14C 042:	\$1,227,400
Case No. 13C 235:	\$1,064,500
Case No. 14C 043:	\$1,064,500
Case No. 13C 236:	\$ 661,300
Case No. 14C 044:	\$ 661,300
Case No. 13C 237:	\$ 259,100
Case No. 14C 045:	\$ 259,100
Case No. 13C 240:	\$ 262,500
Case No. 14C 049:	\$ 262,500
Case No. 13C 241:	\$ 227,500
Case No. 14C 050:	\$ 227,500
Case No. 13C 243:	\$1,531,000
Case No. 14C 052:	\$1,531,000
Case No. 13C 244:	\$1,035,900
Case No. 14C 053:	\$1,035,900
Case No. 13C 245:	\$ 521,000
Case No. 14C 054:	\$ 521,000

3. 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 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013, 2014, 2015 and 2016.
7. This Decision and Order is effective for purposes of appeal on February 13, 2018.<sup>70</sup>

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<sup>70</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Signed and Sealed: February 13, 2018

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.