

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

Springfield Business Park, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13C 418 & 14C-011

Decision and Order Reversing  
County Board of Equalization

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The parcel under appeal, which is herein referred to as the “Subject Property,” is a 24,089 sq. ft. unimproved commercial parcel located at 17107 Evans Place, Omaha, Douglas County, Nebraska. The Subject Property’s legal description appears in the Case Files.
2. The Douglas County Assessor (herein referred to as the “County Assessor”) assessed the Subject Property at \$260,200 for tax years 2013 and 2014.
3. Timothy M. Kerrigan, a Member of Springfield Business Park, LLC (herein referred to as the “Taxpayer”), protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax years 2013 and 2014.
4. The County Board determined that the taxable value of the Subject Property was \$260,200 for tax years 2013 and 2014.
5. The Taxpayer appealed the determinations of the County Board for tax years 2013 and 2014 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on May 21, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference Room 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Timothy M. Kerrigan appeared at the hearing on behalf of the Taxpayer.
8. Keith Nielsen, an Appraiser employed by the Douglas County Assessor’s Office, was present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The County Board submitted Assessment Reports for tax years 2013 and 2014, which contain Property Record Files (“PRFs”) for the Subject Property, three alleged comparable sale properties, and three alleged comparable equalization properties.
10. The Subject Property’s PRF indicates that the Taxpayer acquired the parcel for \$300,000 in March 2008.
11. The Assessment Reports indicate that the Subject Property’s assessment was increased from \$90,300 for tax years 2009 – 2010 and \$211,300 for tax year 2011 to \$260,200 for tax years 2013 and 2014 as a result of a “Land Review” by the County Assessor in 2013.
12. The Taxpayer’s documentation and statements by Mr. Kerrigan at the hearing before the Commission assert that the Subject Property should be valued at \$90,344 (\$3.75 per sq. ft.) for tax year 2013 and \$96,118 for tax year 2014 (\$3.99 per sq. ft.). In support of this

assertion, the Taxpayer presented assessment information for parcels near the Subject Property together with documentation and statements by Mr. Kerrigan indicating these parcels were superior and assessed at a lower per square foot value for tax years 2013 and 2014. The Taxpayer also submitted documentation and statements indicating that the \$300,000 purchase price disclosed on the Form 521 Real Estate Transfer Statement filed in connection with its 2008 acquisition of the Subject Property in 2008 is not correct, and that the correct amount is \$90,000 to \$100,000.

13. The Taxpayer did not submit PRFs of comparable properties or an appraisal in support of its opinions of value for tax years 2013 and 2014.
14. Mr. Kerrigan is a licensed real estate broker and a Certified Commercial Investment Member.
15. The Assessment Reports indicate that the County Board's determinations for tax years 2013 and 2014 are based on the County Assessor's sales comparison approach model derived from market area arm's-length sales. The Assessment Reports contain information concerning three sales and three equalization comparables that the County asserts support its \$10.80 per sq. ft. assessment for tax years 2013 and 2014 (24,089 sq. ft. x \$10.80 per sq. ft. = \$260,200). The County also submitted a \$14 per sq. ft. listing agreement for the Subject Property and other documentation regarding sales and listings of alleged comparable properties in the market area in support of the County Board's 2013 and 2014 determinations.
16. Mr. Kerrigan asserted that the \$14 per sq. ft. Subject Property listing submitted by the County is misleading because the Taxpayer purchased the parcel in 2008 subject to a \$14 per sq. ft. minimum. He also stated that the Subject Property has been listed for a long period without sale, and that the parcel can be sold for less than the minimum \$14 per sq. ft. listing requirement (the Commission notes that one County document indicates a 14 per sq. ft. listing dated 2011).
17. Referencing Omaha's Harley Davidson facility across the street from the Subject Property near 168<sup>th</sup> & West Maple Road with respect to the parcels submitted by the Taxpayer for consideration during the County Board protest process, the 2013 Assessment Report states as follows:

Taxpayer's representative submitted 3 parcels in Thompson Mile West for comparison. These 3 parcels have influence from the Harley Davidson plant, but are discounted due to the developer's ownership and absorption to the market and are not comparable. The area past the Harley Davidson area is mostly undeveloped on that North side. The subject is listed for \$14/sf and although smaller than the other lots, is directly influenced by the Target and Hobby Lobby as anchors and the Walmart across the street.

### **STANDARD OF REVIEW**

18. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>1</sup> "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

---

<sup>1</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).

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.”<sup>2</sup>

19. When considering an appeal 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.”<sup>3</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>4</sup>
20. 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>5</sup>
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

### **GENERAL VALUATION LAW**

22. 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>7</sup>
23. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>
24. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>9</sup>
25. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.<sup>10</sup>
26. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>11</sup>
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>12</sup>
28. Nebraska Statutes section 77-112 defines actual value as follows:

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.

---

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

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

<sup>7</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>8</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>9</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>10</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>11</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>12</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

## VALUATION ANALYSIS

29. The Taxpayer derived opinions of value in the amount of \$90,334 and \$96,115 for the Subject Property for tax years 2013 and 2014 based on an average of assessed values of alleged comparable properties.
30. The Taxpayer's opinions of value can best be described as an attempted sales comparison approach.
31. An opinion of value under the sales comparison approach is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property,<sup>14</sup> and use of a systematic procedure.<sup>15</sup> This approach also requires that analyzed properties must be comparable to the subject property, and receive adjustments for any differences.<sup>16</sup>
32. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.<sup>17</sup> If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.<sup>18</sup>
33. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>19</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>20</sup>
34. The Taxpayer's opinion of value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the Subject Property's land component. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.<sup>21</sup> Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.

---

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>14</sup> *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

<sup>15</sup> *Id.* at 301-302.

<sup>16</sup> *Id.*

<sup>17</sup> See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>18</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

<sup>19</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>21</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

35. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.<sup>22</sup> Additionally, “[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”<sup>23</sup>
36. An examination of the properties submitted for consideration by the Taxpayer is limited because PRFs were not presented to the Commission. Additionally, the Taxpayer’s opinions of value do not use sales prices exclusively, but instead rely upon an examination of averaged assessed values. The Taxpayer’s approach for determining the actual value of the Subject Property’s land component does not meet the requirements of the sales comparison approach.<sup>24</sup>
37. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer’s opinions of value because they are not based on a professionally accepted appraisal approach.
38. The Assessment Report indicates that the County Board adopted the County Assessor’s \$260,200 opinion of value which was calculated through the use of a sales comparison approach. The sales comparison approach is a statutorily permissible method for determining the actual value of real property for property tax purposes.<sup>25</sup>
39. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board’s \$260,200 determinations were unreasonable or arbitrary for tax years 2013 and 2014.
40. The Commission notes that the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

**NOTE:** *Copies of the County’s Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

## **GENERAL EQUALIZATION LAW**

41. “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.”<sup>26</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>27</sup> 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.<sup>28</sup>

---

<sup>22</sup> See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

<sup>23</sup> *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13<sup>th</sup> ed. 2008).

<sup>24</sup> See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13<sup>th</sup> ed. 2008).

<sup>25</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>26</sup> *Neb. Const.*, Art. VIII, §1.

<sup>27</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>28</sup> *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).

42. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>29</sup>
43. 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.<sup>30</sup> 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.<sup>31</sup>
44. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>32</sup> 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 [sic].”<sup>33</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>34</sup>
45. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>35</sup>
46. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”<sup>36</sup>

### EQUALIZATION ANALYSIS

47. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>37</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value;<sup>38</sup> or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.<sup>39</sup>
48. For equalization analysis purposes, the Taxpayer information regarding parcels in close proximity to the Subject Property (PRFs were not submitted).
49. In part substantial part because PRFs were not submitted by the Taxpayer for the parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission does not find clear and

<sup>29</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>30</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>31</sup> *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).

<sup>32</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>33</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>34</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>35</sup> *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>36</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>37</sup> See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>38</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>39</sup> See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

convincing evidence that the Subject Property was not equalized with these properties for tax years 2013 and 2014.

50. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was less than 100% for tax years 2013 and 2014. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.
51. The Commission notes, however, that the documents presented at the hearing before the Commission state that the County Assessor applied a developer's discount to some parcels in Douglas County. Therefore, the Commission finds that the County valued some parcels at an amount less than actual value in tax years 2013 and 2014.
52. The use of a developer's discount to determine the actual value of real property for property tax purposes has not been addressed by Nebraska Courts. The issue, however, has been addressed by several courts in other jurisdictions.<sup>40</sup> Additionally, the Commission has previously held that the use of a developer's discount violates the principles and requirements of Nebraska ad valorem taxation laws for actual value and equalization purposes.<sup>41</sup> The Commission recognizes that decisions from jurisdictions outside of Nebraska negating the use of a developer's discount for property tax purposes are persuasive only and not controlling. The Commission, however, finds these decisions and the reasoning associated therewith instructive.
53. In *Hixon v. Lario Enterprises, Inc.*, the Kansas Court of Appeals described the developer's discount in the property tax context as follows:

The developer's discount method of valuation, which is also known as the subdivision approach or the development approach, consists of a discounted cash flow analysis which considers a projected absorption rate and the corresponding drop in income from the sale of lots. Inherent in this approach is the notion that, if the owner of multiple lots places them all on the market at once, there would not be enough buyers in the marketplace who would be willing to pay full market price for each lot. Such approach assumes that the seller would have to discount the price of the property to lure additional buyers into the market. The discount is calculated by

---

<sup>40</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 Builing 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>41</sup> See, *CAE Enterprises LLC v Sarpy*, 08C-002 (July 14, 2009); *Palisades Development LLC v Sarpy*, 08R-863-68 (August 11, 2010); *Savanna Shores Development LLC v Sarpy*, 08R-276-87 (August 11, 2010). (Available on the Commission's website at [terc.ne.gov](http://terc.ne.gov)).

utilizing an absorption factor, which is based upon the number of willing buyers in any given year. In the alternative, the developer's discount method could be defined as the price that the owner of multiple lots would accept for all of its lots when sold to one buyer; that buyer would presumably pay a discounted price for each individual lot because the buyer would take the absorption factor into account in determining how quickly, and for what price, he or she could in turn sell the lots to other buyers.<sup>42</sup>

54. In holding that the developer's discount method described above violated Kansas Statute section 79-501 requiring assessment of real property at fair market value and the uniformity clause of the Kansas Constitution, the Kansas Court of Appeals reasoned as follows: "The developers discount method of valuation, as applied to the facts of this case, systematically favors the owners of multiple lots over the owners of single lots within a subdivision. Such method of valuation systematically favors the developers of subdivisions over the owners of lots located throughout the taxing unit."<sup>43</sup>
55. Nebraska Statutes section 77-201 requires the valuation of real property for assessment purposes at its actual value, with the exception of agricultural or horticultural land or historically significant real property.<sup>44</sup> Nebraska Statutes section 77-112 defines "actual value" as follows:

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.

56. Nebraska Statutes section 77-131 further defines taxable value as equal to actual value, stating as follows: "[t]axable value shall be as described in section 77-201 and shall have the same meaning as assessed value."<sup>45</sup>
57. Nebraska Statutes require parcels to be assessed at actual value. Based on the the use of a developer's discount in the documents referenced above, the Commission finds that the County valued some parcels at an amount less than actual value for tax years 2013 and 2014.

---

<sup>42</sup> *Hixon v. Lario Enterprises, Inc.*, 19 Kan..App.2d 643, 647, 875 P.2d 297, 301 (1994).

<sup>43</sup> *Hixon v. Lario Enterprises, Inc.*, 19 Kan..App.2d 643, 653, 875 P.2d 297, 304 (1994).

<sup>44</sup> Neb. Rev. Stat. § 77-201 (Reissue 2009).

<sup>45</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

58. The Nebraska Constitution requires uniform and proportionate treatment of real property, with the exception of agricultural or horticultural land.<sup>46</sup> Based on the use of a developer's discount, the Commission finds that the County does not value some parcels uniformly throughout the taxing district.
59. The Commission is mindful that a reduced tax rate on undeveloped lots may be justified for policy reasons. The Commission's duty, however, is to enforce Nebraska law requiring the assessment of residential and commercial real property at 100% of actual or fair market value.
60. For the reasons discussed above, the Commission finds that the County's use of a developer's discount violates equalization principles, and that therefore the County Board's determinations for the Subject Property for tax years 2013 and 2014 are arbitrary and unreasonable.
61. In the case where it is determined that the County Board's determination are unreasonable or arbitrary, the Commission must review the evidence and adopt the most reasonable estimate of actual value presented.<sup>47</sup>
62. The Commission notes that the County's documentation including PRFs indicates that the parcel located at 17141 Evans Place (Parcel # 2532200304) was assessed at \$8.19 for tax years 2013 and 2014 based on application of a developer's discount. The Commission also notes that this parcel is substantially similar to the Subject Property in terms of size (24,960 sq. ft. vs. 24,089 sq. ft.) and location (adjacent to the Subject Property, which is situated at 17107 Evans Place).
63. The Commission finds that the best evidence of the equalized value of the Subject Property is the \$8.19 per sq. ft. assessment applied to the 17141 Evans Place parcel for tax years 2013 and 2014. Therefore, the Commission finds that the equalized value of the Subject Property is \$197,300 for tax years 2013 and 2014 (24,089 sq. ft. x \$8.19 per sq. ft. = \$197,300, rounded).

## CONCLUSION

64. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
65. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be vacated and reversed.

## ORDER

### IT IS ORDERED THAT:

1. The Decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2013 and 2014 are vacated and reversed.

---

<sup>46</sup> Neb. Const., Art. VIII, §1 ["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."]. See, *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, S-12-623 (2013) (referencing *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984)).

<sup>47</sup> See, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002); *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

2. The taxable value of the Subject Property for tax years 2013 and 2014 is:

Land	\$ 197,300
<u>Improvements</u>	<u>\$ 0</u>
Total	\$ 197,300

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 years 2013 and 2014.
7. This Decision and Order is effective on July 2, 2015.

Signed and Sealed: July 2, 2015.

---

Thomas D. Freimuth, Commissioner