

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Springfield Lake Development Co., LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee

Case Nos: 10R 141, 10R 142, 10R 143,
10R 144, 10R 145, 10R 146, 10R 147,
10R 148, 11R 224, 11R 225, 11R 226,
11R 227, 11R 228, 11R 229, 11R 230,
12R 283, 12R 284, 12R 285, 12R 286,
12R 287, 12R 288, & 12R 289

Decision Affirming the Determinations of
Sarpy County Board of Equalization

For the Appellant:

Kevin J. Dostal & Ralph A. Froehlich,
Locher Pavelka Dostal
Braddy & Hammes, LLC

For the Appellee:

Nicole O’Keefe,
Sarpy County Attorney

Appeals heard before Commissioners Salmon and Freimuth.

I. THE SUBJECT PROPERTY

The Subject Properties are unimproved residential parcels located in Sarpy County. The legal descriptions of the parcels are found at Exhibits 1-15. The property record cards for the Subject Properties are found at Exhibits 20, 27, 34, 41, 48, 55, and 62.

II. PROCEDURAL HISTORY

Springfield Lake Development Co., LLC (Taxpayer), appealed the assessed values for the Subject Properties for tax years 2010, 2011, and 2012 to the Sarpy County Board of Equalization (County Board). The Taxpayer appealed the determinations of the County Board to the Nebraska Tax Equalization and Review Commission (Commission). A summary of the assessed values, Taxpayer’s protested values to the County Board, and the County Board’s final determinations are contained in the following table:

Case No	Assessed Value	Protested Value	County Board Value
10R-141 ¹	\$51,700.00	\$35,000.00	\$51,700.00
10R-142 ²	\$51,700.00	\$35,000.00	\$51,700.00
10R-143 ³	\$47,000.00	\$30,000.00	\$47,000.00
10R-144 ⁴	\$37,600.00	\$25,000.00	\$37,600.00
10R-145 ⁵	\$37,600.00	\$25,000.00	\$37,600.00
10R-146 ⁶	\$37,600.00	\$25,000.00	\$37,600.00
10R-147 ⁷	\$37,600.00	\$25,000.00	\$37,600.00
10R-148 ⁸	\$51,700.00	\$35,000.00	\$51,700.00
11R-224 ⁹	\$51,700.00	\$35,000.00	\$51,700.00
11R-225 ¹⁰	\$51,700.00	\$35,000.00	\$51,700.00
11R-226 ¹¹	\$47,000.00	\$30,000.00	\$47,000.00
11R-227 ¹²	\$37,600.00	\$25,000.00	\$37,600.00
11R-228 ¹³	\$37,600.00	\$25,000.00	\$37,600.00
11R-229 ¹⁴	\$37,600.00	\$25,000.00	\$37,600.00
11R-230 ¹⁵	\$37,600.00	\$25,000.00	\$37,600.00
12R-283 ¹⁶	\$110,000.00	Unknown	\$51,700.00
12R-284 ¹⁷	\$51,700.00	Unknown	\$51,700.00
12R-285 ¹⁸	\$47,000.00	Unknown	\$47,000.00

¹ E1:1 (Assessed and County Board Value); E85:4 (Protested Value).

² E3:1 (Assessed and County Board Value); E91:7 (Protested Value).

³ E5:1 (Assessed and County Board Value); E97:5 (Protested Value).

⁴ E7:1 (Assessed and County Board Value); E103:1 (Protested Value).

⁵ E9:1 (Assessed and County Board Value); E108:5 (Protested Value).

⁶ E11:1 (Assessed and County Board Value); E114:5 (Protested Value).

⁷ E13:1 (Assessed and County Board Value); E120:5 (Protested Value).

⁸ E15:1 (Assessed and County Board Value); E126:5 (Protested Value).

⁹ E2:1 (Assessed and County Board Value); E86:5 (Protested Value).

¹⁰ E4:1 (Assessed and County Board Value); E92:5 (Protested Value).

¹¹ E6:1 (Assessed and County Board Value); E98:5 (Protested Value).

¹² E8:1 (Assessed and County Board Value); E104:5 (Protested Value).

¹³ E10:1 (Assessed and County Board Value); E109:5 (Protested Value).

¹⁴ E12:1 (Assessed and County Board Value); E115:5 (Protested Value).

¹⁵ E14:1 (Assessed and County Board Value); E121:5 (Protested Value).

¹⁶ E138:1 (Assessed and County Board Value). Protest Value not in evidence.

¹⁷ E139:1 (Assessed and County Board Value). Protest Value not in evidence.

¹⁸ E140:1 (Assessed and County Board Value). Protest Value not in evidence.

Case No	Assessed Value	Protested Value	County Board Value
12R-286 ¹⁹	\$37,600.00	Unknown	\$37,600.00
12R-287 ²⁰	\$37,600.00	Unknown	\$37,600.00
12R-288 ²¹	\$37,600.00	Unknown	\$37,600.00
12R-289 ²²	\$37,600.00	Unknown	\$37,600.00

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the December 4, 2012, 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 exchanged exhibits. The Commission held a hearing on December 4, 2012, which was recessed until a later date and resumed and concluded on January 4, 2013.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.²³ 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.”²⁴

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.²⁵

¹⁹ E141:1 (Assessed and County Board Value). Protest Value not in evidence.

²⁰ E142:1 (Assessed and County Board Value). Protest Value not in evidence.

²¹ E143:1 (Assessed and County Board Value). Protest Value not in evidence.

²² E144:1 (Assessed and County Board Value). Protest Value not in evidence.

²³ See, Neb. Rev. Stat. §77-5016(8) (2012 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).

²⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

²⁵ *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.²⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²⁷

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²⁸ 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.²⁹

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.”³⁰ 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.”³¹

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.³²

“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

²⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁸ 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).

²⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

³⁰ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

³¹ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

³² Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”³³ “Actual value, market value, and fair market value mean exactly the same thing.”³⁴ 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.³⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁷

B. Summary of the Evidence

W.H. Looby, member of Springfield Lake Development Co., LLC, testified concerning the Subject Properties. Looby stated that Sarpy County’s developers’ discount was lower than other counties, and that he was unaware of the County Assessor’s methodology for determining the developers’ discount. Looby asserted that the Sarpy County’s developers’ discount should be similar to other counties’ discounts.

Tim Ederer, a real estate appraiser for Sarpy County, testified concerning the Subject Properties. The County Board provided copies of the Sarpy County Assessor’s Office policy for the valuation of residential subdivisions which had not reached build out for tax years 2010, 2011, and 2012.³⁸ He testified that he set the value on vacant land in Sarpy County by using a Computer Assisted Mass Appraisal table driven system, wherein the vacant lot discount rate is added. The County Assessor determined the actual value of the Subject Properties using a sales comparison approach and relying upon sales of parcels within the Subject Properties’ market area.³⁹ The actual value was then used as a base value and discounted by a factor determined by a discounted cash flow analysis.⁴⁰ The County Assessor’s method for determining the assessed value is described as follows:

It is the policy of the Sarpy County Assessor’s Office to value subdivision land and /or lots using the proportioned methodology or the discounted cash flow methodology. The

³³ *Id.*

³⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

³⁸ E80, E81, E167.

³⁹ E16:1.

⁴⁰ *Id.*

proportioned method values the lots as a proportion of the acreage value of the land as a whole. The discount method recognizes that the lots take a period of time to sell and the revenue stream will be generated over a period of time. The discounted cash flow valuation will value the land/lots in terms of income streams worth as of the current year. The discounted valuation method will be continued until the lot is improved upon, or until the build-out point, whichever comes first.⁴¹

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.⁴² 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 Statute.⁴³ 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.

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.⁴⁴ 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

⁴¹ E80:1.

⁴² 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 states 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 A2d 1215 (1985) (rejecting the use of a developer's discount to value property for ad valorem tax purposes).

⁴³ 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).

⁴⁴ Neb. Rev. Stat. § 77-201 (Reissue 2009).

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.

Nebraska Statutes further defines taxable value, “[t]axable value shall be as described in section 77-201 and shall have the same meaning as assessed value.”⁴⁵

Nebraska Statute requires the Subject Properties to be assessed at actual value. It is apparent from the evidence and testimony that in 21 of the 22 case above captioned, the County Assessor instead valued the Subject Properties at an amount less than actual value.

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.”⁴⁶ In other words, the discounted cash flow analysis, or developers’ discount does not value a parcel individually, but instead determines the aggregate value of a group of parcels to a developer or investor. In the current cases, the likely buyers are not one purchaser, but a single purchaser per lot intending to develop the lot for residential purposes.

Nebraska Law requires an assessor to prepare an assessment roll each year.⁴⁷ Nebraska Statute requires that the assessment roll list the number of lots comprising the parcel and the value of the parcel.⁴⁸ Nebraska Statutes define a “parcel”:

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on

⁴⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁴⁶ The Appraisal of Real Estate, 13th Ed., Appraisal Institute (2008) at 370.

⁴⁷ Neb. Rev. Stat. §77-1303 (2012 Cum. Supp.).

⁴⁸ *Id.*

leased land. If all or several lots in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel.⁴⁹

In the above captioned cases, each of the Subject Properties consists of a single lot. The Commission finds that because the valuation of a single lot as a parcel is required by Nebraska Statute, that is was unreasonable and arbitrary for the County Board to adopt the County Assessor's determination of value based upon a developers' discount which does not value the Subject Properties individually.

Additionally, when discussing the strength of a value indication derived from a discounted cash flow analysis, the literature states that, "[t]he value indication is most persuasive when the sales comparison method provides additional support."⁵⁰ In other words, a discounted cash flow analysis should be supported by the sales comparison approach. The County Assessor's determination of value is not supported by the sales comparison approach. Instead the testimony and evidence presented indicates that the County Assessor first determined actual value as indicated by the sales comparison approach and then discounted it based upon a developers' discount.

While the Commission acknowledges that there may be some justifiable policy reasons for desiring a lower tax rate on undeveloped lots, this policy would not trump the requirement that all real property, other than agricultural and horticultural real property, in Nebraska be assessed at one hundred percent of actual or fair market value. Additionally, the Commission finds that the Commission has no authority or power in hearing and deciding a valuation appeal to implement this policy.

The Commission finds that the County Board's adoption of the County Assessor's value determined after the application of a developer's discount is arbitrary and unreasonable.

At the hearing, Robert Charlson, a licensed appraiser, testified concerning the actual value of the Subject Properties. The Taxpayer supplied the Commission with summaries of the appraisals for the real property as prepared by Charlson in 2008 and 2010 for the Subject Properties.⁵¹ The

⁴⁹ Neb. Rev. Stat. §77-132 (Reissue 2009).

⁵⁰ The Appraisal of Real Estate, 13th Ed., Appraisal Institute (2008) at 370.

⁵¹ Exhibits 87, 88, 93, 94, 99, 100, 105, 106, 110, 111, 116, 117, 122, 123, 127, 128, 180, 181, 184, 185, 189, 190, 194, 195, 199, 200, 204, 205.

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.⁵² 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.”⁵³

Charlson testified concerning his appraisals of the Subject Properties in 2008 and 2010. Charlson asserted that for his 2008 appraisals there were no available and appropriate sales from the Subject Properties’ subdivision, because the sales of properties within the subdivision were older than the preferable or acceptable ranges; six months being preferable and up to one year being acceptable. He also testified that the three sales within one year of the 2010 appraisals were not comparable to the Subject Properties.

Charlson testified that he had instead used sales from other neighborhoods and different counties at distances typically outside the acceptable range for a fee appraisal, because it was his opinion that: (1) the sales within the Subject Properties’ subdivision were higher quality parcels or premiere lots with large lake fronts and unobstructed views that would require adjustments in excess of 50%; (2) the sale prices were not indicative of what a typical buyer would pay for a comparable parcel; or (3) the sales occurred greater than six months prior to the date of assessment. Charlson testified sales should not be more than one year old and preferably no more than six months old for a fee appraisal, and it was better to use sales from outside the typically acceptable distance than to use sales which were older than typically acceptable.

Charlson further testified that he was required to limit the adjustments to 50% on any comparable property because of the general rules and preferences of financial institutions. He testified that while it was possible to make adjustments for the differences, those adjustments would exceed the typical requirements for lending institutions; generally 50% gross or 15% per adjustment. He asserted that his adjustments to his alleged comparable properties were high because of the unique characteristics of the properties.⁵⁴

⁵² See, *JQH La Vista Conf. Ctr. V. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 127, 825 N.W.2d 447 (2013).

⁵³ *Id.*

⁵⁴ “It was necessary to exceed normal net and/or gross adjustment guidelines. These sales were selected after careful review of limited available data for this type of property and are considered the best available.” Exhibits 87:3, 88:3, 93:3, 94:3, 99:3, 100:3,

Jo Boyles, a licensed real estate agent with CBS Homes, testified on behalf of the Taxpayer. Boyles testified that she had participated in the sale of other properties within the Subject Properties' subdivision and that she had specific knowledge concerning those sales. She testified that the premiere lots in the Subject Properties' subdivision had been sold. She described Lots 2 & 4 as having great beach front, and good views.⁵⁵ She stated that she did not consider Lots 6, 7, 10, and 11 as choice lots. Instead she testified that from a real estate agent's perspective they were challenging lots, because there is little access to the lake and a decreased view of the river. She posited that a likely buyer for these lots would want privacy and easy access to the metro area. Regarding the sale of Lot 16, she testified that it was an arm's length transaction, but that Lot 16 was the best lot in the subdivision because of its phenomenal view and great beach front.

Ederer testified that in his opinion the alleged comparable properties utilized in Charlson's sales comparison approach were located too far from the Omaha metro area to be truly comparable to the Subject Properties. He asserted that in Sarpy County as the distance from a residential property to Omaha metro area increases, the value of the property generally decreases. He testified that this would require an additional adjustment to the alleged comparable sales. He further testified that the sales within the Subject Properties' subdivision between 2008 and 2010 were acceptable comparable properties, and that the sales had been included in the County Assessor's mass appraisal model.

The Commission finds that the County Assessor's determination of value prior to the application of the developers' discount is the best evidence of the Subject Properties' actual values. The Commission finds that Charlson's appraisals are not persuasive evidence of the Subject Properties actual value.

Charlson's appraisals failed to utilize recent sales within the Subject Properties' subdivision documented in Exhibit 70. The Commission notes that the sales of Lots 3, 8, and 13 were

105:3, 106:3, 110:3, 111:3, 116:3, 117:3, 122:3, 123:3, 127:3, 128:3, 180:3, 181:3, 184:3, 185:3, 189:3, 190:3, 194:3, 195:3, 199:3, 200:3, 204:3, 205:3.

⁵⁵ E69 contains an aerial map of Villa Springs Replat 1, the Subject Properties' subdivision. The properties within the subdivision are labeled with their corresponding lot numbers. The Commission notes the following correlation between lot numbers and cases numbers: Lot 2 (10R-141), (11R-224), and (12R-283); Lot 4 (10R-142), (11R-225), and (12R-284); Lot 5 (10R-143), (11R-226), and (12R-285); Lot 6 (10R-144), (11R-227), and (12R-286); Lot 7 (10R-145), (11R-228), and (12R-287); Lot 10 (10R-146), (11R-229), and (12R-288); Lot 11 (10R-147), (11R-230); (12R-288); Lot 16 (10R-148). See E1-15 (legal descriptions of Subject Properties).

available for inclusion in Charlson's 2010 appraisals and were within one year of the appraisal.⁵⁶ The Commission finds that there are no differences requiring inappropriate adjustments between the Subject Properties and Lots 3 and 13. Although some adjustments would be required for differences in size, length of lakefront, and view, the Commission notes that some of the Subject Properties are very similar to the sold properties; including Lots 2 and 4 being very similar to Lot 3.

Additionally, while Charlson was concerned that the sale price of Lot 16 exceeded his expectations, the Commission notes that Boyles testified that the sale was an arm's length transaction, and there was no evidence or testimony to suggest that the sale was affected by some influence or factor that would disqualify it from consideration.

The Commission finds more persuasive a determination of value based upon sales within the Subject Properties subdivision subject to similar economic factors, then a determination of value based upon sales located outside the typically accepted distance from the Subject Properties. In the present case, Charlson's alleged values are even less persuasive because his alleged comparable properties still required adjustments beyond the normally acceptable level; contradicting his stated reasons for using comparable properties located at an atypical distance from the Subject Properties.⁵⁷

Further, while Charlson asserted that the purpose for the appraisals was to determine both the taxable values and estate values of the Subject Properties, his appraisals specifically limit that the appraisals intended uses: "Function of this appraisal is to determine market value for an estate and is not intended for any other use."⁵⁸ Charlson testified that given the opportunity he would adjust that portion of his appraisals. However, his testimony and the organization of his appraisals, including his decision to determine acceptable comparable properties based upon

⁵⁶ E:70

⁵⁷ Charlson's appraisal from 2010 indicates that he gave a 50% adjustment to comparable property #1 and a 66.7% adjustment to comparable properties #2 and #3. See, E57:2.

⁵⁸ Exhibits 87, 88, 93, 94, 99, 100, 105, 106, 110, 111, 116, 117, 122, 123, 127, 128, 180, 181, 184, 185, 189, 190, 194, 195, 199, 200, 204, 205. Pages 2.

financial institution standards, causes the Commission to give his opinions of value less probative weight.⁵⁹

Finally, while asking price is not synonymous with sale price, the asking prices are indicia of the actual value of property.⁶⁰ The asking price for properties in the Subject Properties subdivision persuades the Commission that the actual values as determined by the County Assessor by the sales comparison approach prior to the application of a developers' discount are more persuasive evidence of actual value than the County Assessor's and County Board's value after application of the developers' discount, and that the County Assessor's and County Board's values after application of the developers' discount is more persuasive than Charlson's appraisal values.

While Charlson testified that he was of the opinion that mass appraisal was inappropriate for the Subject Properties due to their unique characteristics, the Commission finds that under Nebraska Revised Statutes section 77-112 the County is required to assess the properties using mass appraisal techniques, and that an appropriately conducted mass appraisal would resolve all of Charlson's concerns.

The Commission notes that Exhibit 70 contains the "full values" or actual values prior to application of the developers' discount, as determined by the County Assessor for the Subject Properties for tax years 2010 and 2011. Additionally, in 12R 283 the Commission notes that the County Assessor assessed the Subject Property at \$110,000, which appears to be the County Assessor's indication of actual value based upon the sales comparison approach. It is apparent that the County Board then applied the developers' discount to the Subject Property in 12R 283. In all appeals for tax year 2012, except 12R 283, the only other evidence of value presented to the Commission was the County Assessor's discounted value adopted by the County Board.

The Commission's rules and regulations do not allow the Commission to set taxable value of real property at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator without specific notice

⁵⁹ "A written report prepared under Standards Rule 2-2(c), pursuant to the Scope of Work, as disclosed elsewhere in this report, is restricted to the stated intended use by the specific client or intended users." Standards Rule 2-2(c)(ii) requires that the appraisal state its intended use.

⁶⁰ "Listings and offering can be useful indicators of the values anticipated by sellers and buyers and reflect the likely turnover of competitive properties." *The Appraisal of Real Estate*, The Appraisal Institute (2008) at 163.

from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.⁶¹ The Commission notes that the County Board did not assert during the hearing that the taxable value should be increased above that previously noticed, and that no notice as required by the Commission's rules and regulations was ever perfected. The Commission finds that it cannot set the taxable value of the Subject Properties at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator in these appeals.

The Commission finds that the best evidence of value for tax years 2010 and 2011 is the "full value" or actual value determined by the County Assessor as indicated in Exhibit 70, and the actual value noticed to the Taxpayer by the County Assessor in case 12R-283. Because the Commission cannot set the taxable value of the Subject Properties at an amount higher than previously noticed to the Taxpayer by the County Assessor, County Board of Equalization, or Property Tax Administrator in these appeals, the Commission finds that while the County Assessor's discounted values are arbitrary and unreasonable, these determinations are the best evidence of value at which the Commission is legally permitted to set the actual value of the Subject Properties for cases 10R 141, 10R 142, 10R 143, 10R 144, 10R 145, 10R 146, 10R 147, 10R 148, 11R 224, 11R 225, 11R 226, 11R 227, 11R 228, 11R 229, 11R 230, 12R 284, 12R 285, 12R 286, 12R 287 ,12R 288, and 12R 289.

The Commission finds that the actual value noticed to the Taxpayer by the County Assessor in case 12R-283 is the best evidence of the actual value of the Subject Property in that case. However, the Nebraska Constitution requires that real property be equalized and valued uniformly.⁶² If the Commission were to value the Subject Property in 12R 283 at the actual value noticed to the Taxpayer by the County Assessor it would result in disproportionate levels of valuation between comparable properties in the same taxing district.⁶³ The Commission affirms the County Board's values in all of the above captioned cases because: (1) the Commission has found that the developers' discount is a statutorily impermissible method for determining the taxable value of real property in Nebraska; (2) the Nebraska Constitution

⁶¹ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

⁶² *Neb. Const.*, Art. VIII, §1.

⁶³ See, *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 20 (2012) (reasoning that uniformity is accomplished .

requires that real property be taxed at a uniform level; and (3) the County Board's values are more persuasive than the Charlson's values.

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 clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable. However, the Commission finds that County Board's determinations of actual value should be affirmed in all cases.

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

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the value of the Subject Properties for tax years 2010, 2011, and 2012 are affirmed.⁶⁴
2. The assessed values of the Subject Properties for tax year 2010 are:

10R-141	
<u>Land</u>	\$51,700.00
Total	\$51,700.00

10R-142	
<u>Land</u>	\$51,700.00
Total	\$51,700.00

10R-143	
<u>Land</u>	\$47,000.00
Total	\$47,000.00

10R-144	
<u>Land</u>	\$37,600.00
Total	\$37,600.00

⁶⁴ Assessed 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.

10R-145

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

10R-146

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

10R-147

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

10R-148

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

3. The assessed values of the Subject Properties for tax year 2011 are:

11R-224

<u>Land</u>	<u>\$51,700.00</u>
Total	\$51,700.00

11R-225

<u>Land</u>	<u>\$51,700.00</u>
Total	\$51,700.00

11R-226

<u>Land</u>	<u>\$47,000.00</u>
Total	\$47,000.00

11R-227

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

11R-228

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

11R-229

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

11R-230

<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

4. The assessed values of the Subject Properties for tax year 2012 are:

12R-283	
<u>Land</u>	<u>\$51,700.00</u>
Total	\$51,700.00

12R-284	
<u>Land</u>	<u>\$51,700.00</u>
Total	\$51,700.00

12R-285	
<u>Land</u>	<u>\$47,000.00</u>
Total	\$47,000.00

12R-286	
<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

12R-287	
<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

12R-288	
<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

12R-289	
<u>Land</u>	<u>\$37,600.00</u>
Total	\$37,600.00

5. 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 (2012 Cum. Supp.)
6. Any request for relief, by any party, which is not specifically provided for by this order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This decision shall only be applicable to tax years 2010, 2011, and 2012.

9. This order is effective for purposes of appeal on March 31, 2014.

Signed and Sealed: March 31, 2014

Nancy J. Salmon, Commissioner

SEAL

Thomas D. Freimuth, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.