

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

James Cobb,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 10R 009, 12R 009, & 13R 009

Decision and Order Reversing the Decision
of the Sarpy County Board of Equalization
in Case No. 10R 009

Decision and Order Affirming the Decisions
of the Sarpy County Board of Equalization
in Case No's. 12R 009 & 13R 009

For the Appellant:

James Cobb,
Pro Se

For the Appellee:

Nicole O' Keefe,
Deputy Sarpy County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Sarpy County. The parcel is improved with a 2,109 square foot ranch style residence located at 10309 Olive Circle, La Vista, Nebraska. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 8.

II. PROCEDURAL HISTORY

The Sarpy County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$376,206 for tax year 2010,¹ \$365,575 for tax year 2012,² and \$363,279 for tax year 2013.³ James Cobb (the Taxpayer) protested these assessments to the Sarpy County Board of Equalization (the County Board) and requested assessed valuations of \$300,710 for tax year

¹ E1, E8:2-3.

² E2, E28:2-3.

³ E3, E41:2-3.

2010,⁴ \$302,965 for tax year 2012,⁵ and \$308,750 for tax year 2013.⁶ The County Board determined that the taxable value of the Subject Property was \$376,206 for tax year 2010,⁷ \$365,575 for tax year 2012,⁸ and \$363,279 for tax year 2013.⁹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). On March 5, 2012, the Commission held a single commissioner hearing concerning the merits of the appeal in Case No. 10R-009. A Decision Reversing the County Board was issued by Commissioner Freimuth on August 15, 2012. On August 27, 2012, the County Board motioned for a rehearing.¹⁰ In an Order dated August 16, 2013,¹¹ the Commission vacated the Single Commissioner Decision dated August 15, 2012, and issued an Order for Re-hearing and Notice of Re-hearing for appeal 10R-009.¹² In an Order dated August 21, 2013,¹³ the Commission issued an order consolidating the above captioned appeals and issued an Order for Hearing and Notice of Hearing scheduling the above captioned appeals for a hearing on the merits before the Commission on October 18, 2013.¹⁴

In accordance with the Commission's Rules and Regulations,¹⁵ the County Board provided a Notice of Intent to Prove a Higher Taxable Value (Notice of Intent) for tax year 2010 on September 18, 2013.¹⁶ Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission.¹⁷ The Commission held a hearing on October 18, 2013.

⁴ E6:1.

⁵ E26:1.

⁶ E39:1.

⁷ E1.

⁸ E2.

⁹ E3.

¹⁰ See, Case File.

¹¹ A further review of the record indicates that the date on the Order was a typographical error. The Order was issued on September 16, 2013. The date of the hearing correctly included the hearing date of October 18, 2013, and notice was properly given to the parties.

¹² See, Case File

¹³ A further review of the record indicates that the date on this Order was also a typographical error. The order was actually signed and issued on September 21, 2013. The date of the hearing correctly included the hearing date of October 18, 2013, and notice was properly given to the parties.

¹⁴ See, Case File

¹⁵ See, 442 Neb. Admin. Code, ch. 5 §016.02A (6/11).

¹⁶ See, Case File.

¹⁷ *Id.*

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.¹⁸ On re-hearing, the Commission determines de novo any decision of or order by the Commission.¹⁹ 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.”²⁰

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.²¹

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.²² Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²³

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.²⁴ 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.²⁵

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

¹⁸ 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).

¹⁹ Neb. Rev. Stat. §77-5005(4) (2012 Cum. Supp.). “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).

²⁰ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

²¹ *Id.*

²² Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²³ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁴ 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).

²⁵ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”²⁶ 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.”²⁷

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.²⁸

“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.”²⁹ “Actual value, market value, and fair market value mean exactly the same thing.”³⁰ 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.³¹ All real property in Nebraska subject to taxation shall be assessed as of January 1.³² All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³³

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

²⁷ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

²⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁹ *Id.*

³⁰ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³¹ Neb. Rev. Stat. §77-131 (Reissue 2009).

³² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³³ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

James C. Cobb, the Taxpayer, testified at the hearing. Cobb stated that he purchased the Subject Property for \$427,962 on March 28, 2007.³⁴ The purchase involved contracting with a builder to construct the home according to Cobb's specifications.³⁵ Cobb asserted that the purchase was not an arm's length transaction. An arm's length transaction is, "[a] transaction between unrelated parties under no duress."³⁶ Cobb argued that the sale of the Subject Property and other properties were not arm's length when they involved a contract between a buyer and a builder. He argued these sales should be distinguished from buyer-to-buyer sales, in part, because builder-to-buyer sales were not advertised on the open market. The Commission is not persuaded by this reasoning. There was no evidence adduced that Cobb and other buyers contracting with builders were under duress to purchase, or were not willing buyers who negotiated with a willing seller.

Cobb also asserted that the cost approach determination of value used by the Assessor³⁷ did not result in an actual value as required by statute and rules and regulations.

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 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.³⁸

Contrary to Cobb's assertions, the cost approach is a statutorily permitted method for determining the actual value of real property for ad valorem tax purposes. Further, no evidence presented proved that the cost approach value did not result in the determination of actual value.

³⁴ See also E8:1; E11:1.

³⁵ Cobb testified that the base cost of the home to be built was \$298,000, but that he and his wife wanted various amenities added to the construction. The addition of these amenities, at the time of original construction, accounted for the purchase price being so much higher than the base price. According to the property record file, the home included 1,640 square feet of finished basement, a basement walkout entry, two fireplaces, a roofed porch, and a 443 square foot wood deck.

³⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

³⁷ For tax year 2010, see E8:1-8. For tax year 2012, see E28:1-5. For tax year 2013, see E41:1-5.

³⁸ Neb. Rev. Stat. §77-112 (Reissue 2009); See also, 350 Neb. Admin. Code, ch 10 §001.15. (6/11)

Cobb further asserted that when the Taxpayer had the home built to his specifications, the end result was that the property was overbuilt for the neighborhood. This argument is best construed as an assertion that the Subject Property suffers from incurable functional obsolescence due to superadequacy – a form of depreciation – because typical buyers of homes in this neighborhood would not be willing to pay dollar for dollar what it cost Cobb to build certain components of his home. Incurable functional obsolescence due to superadequacy occurs, “when an item/component of the improvement exceeds the market’s requirements.”³⁹ Functional obsolescence is incurable if the current layout or design of the property cannot be changed economically to resolve the obsolescence.⁴⁰ “This type of depreciation exists when there is cost without corresponding increment in value or cost that the increment of value does not meet.”⁴¹ Functional obsolescence is the loss of value in a property improvement due to changes in style, taste, technology, needs, and demands and can be curable or incurable.⁴² Functional obsolescence exists when a property suffers from poor or inappropriate architecture, lack of modern equipment, wasteful floor plans, inappropriate room sizes, inadequate heating or cooling capacity, and so on.⁴³ Functional obsolescence is the inability of a structure to perform adequately the function for which it is currently used.⁴⁴

Cobb did not identify the features he asserted were superadequacies nor did he quantify any alleged amount of incurable functional obsolescence. The Commission finds that there is not sufficient evidence of any alleged incurable functional obsolescence due to superadequacies, nor is there sufficient evidence of any impact the superadequacies would have on the actual value of the Subject Property.

Cobb also asserted that sales of comparable properties did not support the Assessor’s cost approach conclusions. Again, Cobb did not provide evidence to quantify this argument other than asserting that the cost approach had not tracked declines in the market. The Commission finds that there is not sufficient evidence that the use of the cost approach failed to appropriately

³⁹ International Association of Assessing Officers, *Property Assessment Valuation*, at 283 (3rd ed. 2010).

⁴⁰ *Id.* at 282.

⁴¹ *Id.* at 283.

⁴² See, *Id.* at 282.

⁴³ See, *Id.*

⁴⁴ See, *Id.*

reflect local market declines, nor is there sufficient evidence of the impact that market declines would have on the actual value of the Subject Property.

Cobb further asserted that assessed value for the 2010 tax year should be “expunged” because it was done in violation of applicable Rules and Regulations. Title 350 of the Nebraska Administrative Code, Chapter 10, Section 002.02B requires, “After March 19, the assessor shall not change the valuation of any real property for the current year except as ordered by the Tax Equalization and Review Commission or the county board of equalization.” Cobb asserted that the Notice Of Intent To Prove Higher Taxable Value (Notice of Intent) constituted a change in the valuation of the Subject Property by the Assessor in violation of Section 002.02B. We do not agree that the Notice Of Intent filed by the Sarpy County Attorney in September of 2013, on behalf of the County Board for tax year 2010, is tantamount to a change in valuation as contemplated in Section 002.02B. On the contrary, after the Assessor had set the value, the County Board had made a determination of taxable value for tax year 2010, and an appeal had been filed with the Commission, the County Board then, as a party to this appeal, filed the Notice Of Intent.⁴⁵ This was done after an exterior and interior inspection of the Subject Property on December 14, 2010, where an appraiser for the Assessor determined the quality grade should be lowered from a 50 (Very Good) to a 45 (Good Plus) and the size of the residence should be increased from 1,937 square feet to 2,109 square feet. The County Board filed the Notice Of Intent on September 18, 2013.⁴⁶ This Notice of Intent did not violate any Rule or Regulation and there was no other evidence in the record that this Rule and Regulation was violated.

The Commission finds that the quality grade change from Very Good to Good Plus and the gross square footage change from 1,937 to 2,109 should be applicable to the Subject Property for each of the tax years at issue: 2010, 2012, and, 2013. The inspection that caused the Assessor to determine that the quality grade and square footage should be changed was conducted on December 14, 2010. No evidence was adduced by either party suggesting that the actual quality grade or gross square footage was different from these inspection determinations on January 1 of any of the three tax years.

⁴⁵ E8:9; See also, Case File.

⁴⁶ E4:1; E8:9-10.

However, in review of all of the evidence received, the Commission has not been able to reconcile the actual value of \$379,535,⁴⁷ recommended by the Assessor for tax year 2010, to the revised cost approach data including the changes above.⁴⁸ The Commission has corrected the error.⁴⁹

Therefore, we find the taxable value for tax year 2010 is \$376,710,⁵⁰ the taxable value for tax year 2012 is \$365,575, and the taxable value for tax year 2013 is \$363,279.

V. EQUALIZATION

A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”⁵¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁵² 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.⁵³ 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.⁵⁴ 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.⁵⁵ 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.⁵⁶ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁵⁷ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation

⁴⁷ E4:1

⁴⁸ E8:6.

⁴⁹ The estimate of value on the Residential Data Sheet – Cost Approach Data of \$376,710 at Exhibit 8:6 was not properly accounted for on the Residential Data Sheet on Exhibit 8:5. This accounts for the value of \$379,535 in the Notice of Intent at Exhibit 8:9-10 rather than the \$376,710 shown on the Cost Approach Data sheet.

⁵⁰ E8:6.

⁵¹ *Neb. Const.*, Art. VIII, §1.

⁵² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁵³ *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).

⁵⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁵⁵ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁵⁶ *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).

⁵⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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].”⁵⁸ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁵⁹ “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.”⁶⁰

B. Summary of the Evidence

Both parties offered numerous Property Record Files of alleged comparable properties. The inspection of the Subject Property on December 14, 2010, indicated that the Subject Property should be rated at Average condition and Good Plus quality. Absent any evidence to the contrary, and for purposes of equalization, the Commission will compare the Subject Property to the other properties that are also Average condition and Good Plus quality. For purposes of its review for all three tax years, the Commission has also utilized the appropriate edition of *Marshall & Swift*, based upon the effective date at issue.⁶¹

When asked if any of the comparable properties in evidence were a “cookie cutter” to the Subject Property, Cobb identified no such property. Cobb asserted that a comparison of the assessed value per square foot of the Subject Property with the assessed value per square foot of comparable properties would indicate the over-assessment of the Subject Property.

For tax year 2010, the Commission has compared the Property Record File for the Subject Property, Exhibit 8, to tax year 2010 property record files for each of the alleged comparable properties in evidence that shared an Average condition rating, Good Plus quality rating, and were ranch style homes. In particular, the Commission focused on the Residential Data Sheet Cost Approach Data for each property.⁶² A review of these Data Sheets indicates the following:

⁵⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵⁹ *Id.* at 673, 94 N.W.2d at 50.

⁶⁰ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁶¹ *Marshall & Swift/Boeckh, LLC, Residential Cost Handbook*,.

⁶² For tax year 2010, the Commission reviewed E16:3, E17:3, E18:3, E19:3, E53:9, and E53:15.

	Area in square feet	Base cost per square foot ⁶³
Subject Property	2,109	\$105.08
E16:3	2,185	\$105.10
E17:3	2,067	\$103.96
E18:3	1,992	\$105.04
E19:3	1,998	\$106.34
E53:9	2,911	\$99.06 ⁶⁴
E53:15	2,225	\$104.46

These comparisons, and the remainder of the data on the Cost Approach Data Sheets,⁶⁵ indicate that in tax year 2010 the Subject Property was assessed uniformly with comparable properties.

For tax year 2012, the Commission has compared the property record file for the Subject Property, Exhibit 28, to tax year 2012 property record files for each comparable property in evidence that shared an Average condition rating, Good Plus quality rating, and were ranch style homes. In particular, the Commission focused on the Residential Data Sheet Cost Approach Data for each property.⁶⁶ A review of these Data Sheets indicates the following:

⁶³ For purposes of this comparison, only the Base Cost per Square Foot is shown. The Commission also reviewed other differences such as fireplaces, extra plumbing fixtures, basement finish etc., and found no evidence to prove that the Subject Property was not assessed uniformly with the comparable properties.

⁶⁴ This alleged comparable property is significantly larger and would appear to appropriately have a lower per square foot assessment due to economies of scale.

⁶⁵ For each of the characteristics of the comparable properties and the Subject Property, the values and multipliers for each feature of the comparable properties were uniformly applied to the Subject Property.

⁶⁶ For tax year 2012, the Commission reviewed E34:3, E56:5, E56:9, E56:13, and E56:21. The alleged comparable property in E33:3 is not comparable to the Subject Property and was not used because it is a two story home. The alleged comparable property in E56:17 is not comparable to the Subject Property and was not used because it has a different quality rating than the Subject Property.

	Area in square feet	Base cost per square foot ⁶⁷
Subject Property	2,109	\$107.91
E34:3	1,763	\$110.20
E56:5	1,988	\$109.20
E56:9	2,214	\$106.10
E56:13	1,888	\$108.72
E56:21	2,025	\$108.80

These comparisons, and the remainder of the data on the Cost Approach Data Sheets,⁶⁸ indicate that in tax year 2012 the Subject Property was assessed uniformly with comparable properties.

For tax year 2013, the Commission has compared the property record file for the Subject Property, Exhibit 41, to tax year 2013 property record files for each comparable property in evidence that shared an Average condition rating, Good Plus quality rating and were ranch style homes. In particular, the Commission focused on the Residential Data Sheet Cost Approach Data for each property.⁶⁹ A review of these Data Sheets indicates the following:

⁶⁷ For purposes of this comparison, only the Base Cost per Square Foot is shown. The Commission also reviewed other differences such as fireplaces, extra plumbing fixtures, basement finish etc., and found no evidence to prove that the Subject Property was not assessed uniformly with the comparable properties.

⁶⁸ For each of the characteristics of the comparable properties and the Subject Property, the values and multipliers for each feature of the comparable properties were uniformly applied to the Subject Property.

⁶⁹ For tax year 2012, the Commission reviewed E47:3, E48:3, E57:7, E57:11, and E56:15. The alleged comparable properties in E56:25, E57:19, and E57:23 are not comparable to the Subject Property and were not used because they had different quality ratings than the Subject Property.

	Area in square feet	Base cost per square foot ⁷⁰
Subject Property	2,109	\$105.57
E47:3	1,702	\$109.67
E48:3	2,009	\$106.60
E57:7	2,025	\$106.43
E57:11	1,890	\$106.44
E57:15	1,888	\$106.95

These comparisons, and the remainder of the data on the Cost Approach Data Sheets,⁷¹ indicate that in tax year 2013 the Subject Property was assessed uniformly with comparable properties.

The Commission notes that when comparing comparable properties to the Subject Property, appropriate adjustments must account for the differences between the properties. A total square footage comparison that ignores these differences is not appropriate and would violate professional appraisal standards and the Uniformity Clause of the Nebraska Constitution.⁷²

After a review of all the evidence received, the Commission finds there is no evidence of a violation of the uniformity clause.

⁷⁰ For purposes of this comparison, only the Base Cost per Square Foot is shown. The Commission also reviewed other differences such as fireplaces, extra plumbing fixtures, basement finish etc., and found no evidence to prove that the Subject Property was not assessed uniformly with the comparable properties.

⁷¹ For each of the characteristics of the comparable properties and the Subject Property, the values and multipliers for each feature of the comparable properties were uniformly applied to the Subject Property.

⁷² “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.” Appraisal Institute, *Appraising Residential Properties*, at 334, (4th ed. 2007). “A size adjustment is estimated by comparing two sale properties that are similar in all elements of comparison except size. If the sales differ in other aspects, these adjustments must be made to the sales first so that the only difference that remains for comparison purposes is size. The two sales usually will reflect different unit values. This value difference is attributable to the difference in the sizes of the two properties and becomes the size adjustment. The size adjustment is applicable to properties that are in the same general size range as the properties from which the adjustment was derived. It cannot necessarily be applied to properties outside this range.” Appraisal Institute, *The Appraisal of Rural Property*, at 240 (2nd ed. 2000).

VI. CONCLUSION

With respect to tax year 2010, 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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's determination of taxable value is arbitrary or unreasonable.

With respect to tax years 2012 and 2013, the Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's determinations of taxable value were arbitrary or unreasonable. The Commission finds there is not clear and convincing evidence that the valuation placed on the Subject Property was grossly excessive in tax years 2010, 2012, and 2013.

For all of the reasons set forth above, the determination by the County Board for tax year 2010 should be vacated and reversed, and the determinations by the County Board for tax years 2012 and 2013 should be affirmed

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2010 is vacated and reversed.
2. The decisions of the Sarpy County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013 are affirmed.
3. The taxable value of the Subject Property is: \$376,710 for tax year 2010, \$365,575 for tax year 2012, and \$363,279 for tax year 2013.
4. 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.).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2010, 2012, and 2013.
8. This Decision and Order is effective for purposes of appeal on November 4, 2013.

Signed and Sealed: November 4, 2013

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

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