

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

LionsGate Partners, Ltd  
By: L.G. Properties Corporation,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 12C 277 & 13C 128

Decision and Order Reversing the  
Determinations of the Lancaster County  
Board of Equalization

**For the Appellant:**  
Jeffrey A. Silver,  
Attorney at Law.

**For the Appellee:**  
Richard C. Grabow,  
Deputy Lancaster County Attorney.

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

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located in Lancaster County, Nebraska. The parcel is improved with a 349,165 square foot apartment complex with 410 units. The legal description of the parcel is found at Exhibit 47. The property record card for the Subject Property is found at Exhibit 47.

**II. PROCEDURAL HISTORY**

The Lancaster County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$19,002,800 for both tax years 2012 and 2013.<sup>1</sup> LionsGate Partners, Ltd By: L.G. Properties Corporation (the Taxpayer) protested these assessments to the Lancaster County Board of Equalization (the County Board). The County Board also determined that the taxable value was \$19,002,800 for both tax years 2012 and 2013.<sup>2</sup>

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<sup>1</sup> See, Case Files.

<sup>2</sup> See, Case Files.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits. The Commission held a hearing on March 25, 2015.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>4</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>5</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>8</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>9</sup>

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<sup>3</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</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>9</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>10</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>11</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

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

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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

<sup>14</sup> *Id.*

<sup>15</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>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>17</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## **B. Summary of the Evidence**

D. David Slosburg, Vice President of L.G. Properties Corporation, the General Partner of LionsGate Partners, Ltd., testified that his responsibilities included the oversight of the Subject Property and other apartment complexes in Lincoln. As part of his responsibilities, Slosburg reviews the cash flow statements for all of the properties and is often involved in purchasing rental properties. Slosburg asserted that the Subject Property was overassessed and not equalized with other properties.

Slosburg described the Subject Property as built in 1989-1990 with 410 units, a club house, and amenities, including a swimming pool and a tennis court. He testified that the units have 8 foot ceilings without sprinklers. Slosburg opined that the actual value of the Subject Property was \$15,100,000 for tax year 2012 and \$15,200,000 for tax 2013. He based his opinion of value on the appraisal reports of Shannon Luepke, discussed in more detail below,<sup>19</sup> his personal experience, and current information he obtained from other apartment complexes he asserted were comparable. He asserted that the operating expenses for the Subject Property were typical for properties in the market with which he was familiar and that the operating expenses were consistent with industry standards.<sup>20</sup>

Concerning the historic expenses for the Subject Property, Slosburg asserted that “Salaries” encompassed money paid to 14 or 15 employees, comprising approximately six leasing agents, four to five maintenance personnel, and two to three individuals employed to prepare empty apartments for new tenants.<sup>21</sup> He asserted that the staff was employed to provide services at any apartment complex managed by the Slosburg Co., but that the line item, “Salaries,” only included the time and work that occurred at the Subject Property. Slosburg testified that the amount of work performed was necessary based on the size of the Subject Property. In support of Slosburg’s assertions, the Taxpayer submitted a breakdown of the staff and the work they

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<sup>19</sup> See, E71 and E73.

<sup>20</sup> On cross examination, Slosburg admitted that he was uncertain whether typical expenses at the Subject Property and other properties owned by the Slosburg Co. were also typical for the market as a whole.

<sup>21</sup> See, E40:116; E42:117; E71:33; and E73:33.

performed at the Subject Property.<sup>22</sup> The Commission notes that the line item, “Salaries,” corresponds with the historic expenses found in the appraisal report.<sup>23</sup>

Slosburg further testified that the line item, “Management,” in the historic expenses, differed from the line item, “Salaries.”<sup>24</sup> He asserted that the “Salaries” category only included salaries paid to employees for the upkeep and daily management of the units. Conversely, the “Management” category represents the money paid to the management company, also owned by Slosburg, which was responsible for performing credit checks and accounting. Slosburg claimed that the industry standard for salary expenses was \$1 per square foot, and under that metric he asserted that the salary expenses for the Subject Property were reasonable.

Slosburg also testified concerning the other categories of expenses found in the Subject Property’s historic expenses, including but not limited to testimony that: (1) the category, “Repairs and maintenance,” meant those costs attributable to repair and maintenance by third party vendors including plumbing, heating and cooling, electrical, and carpentry work; (2) the category, “Painting and Paper,” meant the costs associated with painting and papering supplies following a move out; (3) the category, “Floor Covering,” meant the cost to replace carpets; and (4) that the reserves for replacement equaled approximately \$300 per unit according to the industry standard and were used for capital expenses including roofs, asphalt, and other major items.<sup>25</sup>

Shannon Luepke, an MAI designated appraiser with Ramsland and Vigen, Inc., conducted retroactive appraisals of the Subject Property as of January 1, 2012, and January 1, 2013, for Slosburg.<sup>26</sup> Luepke considered all three appraisal approaches to value, but because of the age of the Subject Property and its character as an investment property she determined that the cost approach was not reliable so she did not complete a cost approach.

Luepke performed a sales comparison approach and testified that the sales comparison approach indicated an actual value range of \$14,350,000 to \$15,580,000. She testified that although she conducted the sales comparison approach she was not satisfied with the quality of

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<sup>22</sup> See, E76 and E77.

<sup>23</sup> See, E76; E77; E40:116; E42:117; E71:33; and E73:33.

<sup>24</sup> See, E40:116; E42:117; E71:33; and E73:33

<sup>25</sup> See, E40:116; E42:117; E71:33; and E73:33

<sup>26</sup> See, E71:80 (qualifications of Shannon M. Luepke).

the available sales. Further, because the Subject Property is an investment property she concluded that the income approach was more appropriate.

Luepke conducted an income approach and used regional and national reports to support her income approach, including; the PricewaterhouseCoopers *Real Estate Investor Survey*, the Institute of Real Estate Management (IREM), for income and expenses, the Real Estate Research Corporation (RERC) real estate report (data for investors on national data breakdown by region), and the Reese Report, including market data for investment properties specifically for Lincoln, with rents and sales.<sup>27</sup>

Concerning expense items, she asserted that “Salaries” and “Management” represent separate expenses that are typical for large apartment complexes. Additionally, she asserted that the two categories were not duplicative. She confirmed that the “Salaries” amount was typical of the market per the IREM report. She testified that painting and paper expenses are divided between “Replacement Reserves” and “Painting and Paper,” and are not double counted.<sup>28</sup> She obtained her rents by looking at the Subject Property’s historic income, some local comparable properties, and the IREM report.<sup>29</sup>

Finally, Luepke derived her capitalization rate from a range found in in the PricewaterhouseCoopers *Real Estate Investor Survey* and the RERC report. Based on her review, she concluded that the appropriate capitalization rate was 10.7695% for tax year 2012 and 10.77% for tax year 2013.<sup>30</sup> She reached a final income approach opinion of value of \$15,100,000 as of January 1, 2012.<sup>31</sup> Her opinion of value for tax year 2013 is \$15,200,000.<sup>32</sup> Luepke defended her use of Omaha market data to value the Subject Property in Lincoln by asserting that while it was imperfect, it was the best available data. Luepke testified that she made adjustments to Omaha market data, but admitted that she was unable to find firm data to use to make these adjustments.

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<sup>27</sup> See, E71:66-77; See also, E73:66-77.

<sup>28</sup> See, E71:77; See also, E73:77.

<sup>29</sup> See, E71:24-32; See also, E73:24-32.

<sup>30</sup> See, E71:38-42; See also, E73:38-42.

<sup>31</sup> See, E71:2.

<sup>32</sup> See, E 73:2.

Jason L. Pickerel, a Certified General Appraiser in Nebraska with over 300 hours of appraisal training,<sup>33</sup> completed retroactive appraisals for the Subject Property for the County Board.<sup>34</sup> Pickerel completed a cost approach, a sales comparison approach, and an income approach for the Subject Property.<sup>35</sup> Pickerel's cost approach opinion of value was \$20,301,100 for tax year 2012,<sup>36</sup> and \$21,051,100 for tax year 2013.<sup>37</sup> Pickerel's sales comparison approach opinion of value was \$19,100,000 for tax year 2012,<sup>38</sup> and \$19,300,000 for tax year 2013.<sup>39</sup> The Commission notes that while Pickerel completed all three approaches to value, his reconciled opinions of value are equal to his income approach values discussed below.<sup>40</sup>

Pickerel asserted that in the appraisal of real property an appraiser should use local market data, and if that data is adequate then there is no reason to go to national resources. He asserted that he was able to find sufficient market data for each of the approaches to value the Subject Property.

In his income approach analysis, Pickerel derived his potential gross income (PGI) by analyzing the Subject Property's asking rents, the Subject Property's current contract rents, and rental information from the websites or owners of ten comparable properties.<sup>41</sup> He derived PGIs of \$3,431,940 for tax year 2012 and \$3,497,880 for tax year 2013.<sup>42</sup> Pickerel also included other income from laundry and additional revenues based on the incomes from other similar properties<sup>43</sup> and he included income from the garages, which are leased separately from the apartments.<sup>44</sup> The garage rents were based on the actual leases.<sup>45</sup>

Pickerel estimated expenses from the Subject Property's historic expenses and expenses obtained from the market.<sup>46</sup> He asserted that the historic expenses provided by the Taxpayer included "Salaries" that were not typical of the market and were, therefore, not appropriate for

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<sup>33</sup> See, E40:129-130 (Certifications of Appraiser).

<sup>34</sup> See, E40 (retroactive appraisal as of January 1, 2012); See also, E42 (retroactive appraisal as of January 1, 2013).

<sup>35</sup> See, E40; See also E42.

<sup>36</sup> See, E40:82.

<sup>37</sup> See, E42:82.

<sup>38</sup> See, E40:98.

<sup>39</sup> See, E42:98.

<sup>40</sup> See, E40:125; See also, E42:126.

<sup>41</sup> See, E40:100-113; See also, E42:100-113.

<sup>42</sup> See, E40:115; See also, E42:115.

<sup>43</sup> See, E40:115; See also, E42:115.

<sup>44</sup> See, E40:114; See also, E42:114.

<sup>45</sup> See, E40:114; See also, E42:114.

<sup>46</sup> See, E40:116-121; See also, E42:116-122.

inclusion in the expenses for purposes of deriving an opinion of value based upon the income approach. He further testified that in his opinion the line item, "Payroll Taxes," was already included in management expenses so he did not include it in his final analysis. He testified that he examined four comparable rental properties and that none of these properties included a separate line item for payroll taxes in expenses.<sup>47</sup>

Pickerel combined line item expenses for the Subject Property into like categories as reported by his comparable properties.<sup>48</sup> Pickerel removed property taxes from the expenses and loaded his capitalization rate.<sup>49</sup> Pickerel derived an expense range of 20-29% from his comparable properties.<sup>50</sup> He determined that the expense ratio for the Subject Property for both tax years should be 33.5% based upon the market and the Subject Property's adjusted historic expenses.<sup>51</sup> Pickerel testified that his adjustments to the expenses were qualitative, subjective, and not based on hard data.

Pickerel derived a capitalization rate using the band of investment and market extraction technique.<sup>52</sup> He derived a base capitalization rate of 8.75%, which when loaded for taxes equaled 10.77%.<sup>53</sup>

Pickerel's final reconciled opinions of value were \$19,072,000 for tax year 2012 and \$19,439,000 for tax year 2013.<sup>54</sup>

### **C. Analysis**

During appeals from a determination of the County Board, there is both a presumption in favor of the County Board and a burden of persuasion placed upon an appealing party.<sup>55</sup> The presumption in favor of the County Board, and the burden of persuasion cannot be conflated, and

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<sup>47</sup> See, E40:117-121; See also, E42:117-120.

<sup>48</sup> See, E40:116; See also, E42:116.

<sup>49</sup> See, E40:116; See also, E42:116.

<sup>50</sup> See, E40:121; See also, E42:122.

<sup>51</sup> See, E40:121; See also, E42:122.

<sup>52</sup> See, E40:122-124; See also, E42:123-125.

<sup>53</sup> See, E40:124; See also, E42:125.

<sup>54</sup> See, E40:125 (2012 reconciled opinion of value); See also, E42:126 (2013 reconciled opinion of value).

<sup>55</sup> See generally, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

require separate analysis.<sup>56</sup> Both the presumption and burden of persuasion relate to the determinations of the County Board.<sup>57</sup>

The presumption is:

[T]hat a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. 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.<sup>58</sup>

Competent evidence is defined as relevant and material evidence or that evidence “which the very nature of the thing to be proven requires.”<sup>59</sup> The Nebraska Supreme Court has held that, “when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.”<sup>60</sup>

Both Luepke and Pickerel conducted appraisals of the Subject Property and certified that they were performed according to professional appraisal standards.<sup>61</sup> The Commission finds that these appraisals constitute competent and relevant evidence concerning the County Board’s determinations. Since each of these appraisals reach value conclusions that differ from the determinations by the County Board for both tax years, the Commission finds that the presumption in favor of the County Board’s determinations are rebutted.

Having determined that the presumption in favor of the County Board’s determinations have been rebutted by competent evidence, the reasonableness of the County Board’s determinations of value based upon the evidence in the appeals is a question of fact.<sup>62</sup> The Taxpayer has the burden to show that the valuation determinations by the County Board were unreasonable or

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<sup>56</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 125-126, 825 N.W.2d 447, 452-453 (2013).

<sup>57</sup> See generally, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 125-126, 825 N.W.2d 447, 452-453 (2013).

<sup>58</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124, 825 N.W.2d 447, 451-452 (2013) (citing *US Ecology v. Boyd Cty. Bd of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999) and *Schmidt v. Thayer Cty. Bd. Of Equal.*, 10 Neb.App. 10, 624 N.W.2d 63 (2001)).

<sup>59</sup> *Black’s Law Dictionary 6th Edition*, West Group, p. 284 (1990).

<sup>60</sup> *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013) (citations omitted).

<sup>61</sup> See generally, E16.

<sup>62</sup> See, Neb. Rev. Stat. 77-5016(9) (Cum. Supp. 2012); See also, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

arbitrary.<sup>63</sup> This burden is only met by clear and convincing evidence.<sup>64</sup> Where clear and convincing evidence shows that the County Board's determinations were arbitrary or unreasonable, the Taxpayer is entitled to relief.<sup>65</sup> An appraisal may constitute competent evidence sufficient to rebut the presumption in favor of the County Board's determinations yet not amount to clear and convincing evidence that the County Board's determinations are unreasonable or arbitrary.<sup>66</sup>

The Commission finds that Luepke's appraisals contain significant errors that limit the weight of the appraisals as evidence of the actual value of the Subject Property for tax years 2012 and 2013. The Commission also determines that the evidence from all appraisals and testimony when taken together amounts to clear and convincing evidence that the County Board's determinations were unreasonable or arbitrary. The County Board chose not to put on evidence supporting its determinations of value or the mass appraisal process used to derive those values. Instead, the County Board presented a new opinion of value through Pickerel, an appraiser, who conducted fee simple appraisals of the Subject Property for tax years 2012 and 2013 after the Taxpayer filed the appeals. Pickerel's opinions of value originally expressed in the appraisals were similar to the County Board's determinations, however, the Commission finds that the appraisals contained errors that when corrected indicate significantly lower actual values for the tax years in question.

In Luepke's appraisals, the calculations of rental income relied both upon rents derived from national sources, and upon aggregate rental rates derived from the Subject Property and some comparable properties. However, the Commission notes that the Subject Property consists of multiple unit types, including three different sizes of one bedroom/one bath apartments and three different sizes of two bedroom/two bath apartments.<sup>67</sup> The data, including the Subject Property's actual rental income and the rental rates from Luepke's comparable properties, indicates that each of these unit types rents for a different rate.<sup>68</sup> Nevertheless, when deriving her potential

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<sup>63</sup> See, Neb. Rev. Stat. 77-5016(9) (Cum. Supp. 2012); See also, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

<sup>64</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 124-125, 825 N.W.2d 447, 451-452 (2013).

<sup>65</sup> Neb. Rev. Stat. § 5016(8) (Reissue 2009).

<sup>66</sup> See generally, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013)

<sup>67</sup> See, E71:24; See also, E73:24.

<sup>68</sup> See, E71:24-31; See also E73:24-31.

gross income (PGI), Luepke aggregated all of the apartment types and derived a single per square foot indicator of rental income for the entire Subject Property.<sup>69</sup> Luepke treated her comparable properties similarly, regardless of whether the proportions of unit types within the comparable properties were similar to the proportion of unit types within the Subject Property.<sup>70</sup> The Commission also notes that the IREM report derives an aggregate per square foot value from the properties it examines, but there is no indication of the types of units found in any of the examined properties.<sup>71</sup>

Further, when deriving her income from other sources, Luepke only included the actual rent from garages leased and the actual income from pet rent collected.<sup>72</sup> However, the Commission notes that the Subject Property also receives income from laundry facilities and other general income typical for rental properties, including late charges and forfeited security deposits.<sup>73</sup> Additionally, Luepke used only two years' worth of data to derive the stabilized income for garages and pet rent.<sup>74</sup> Stabilized income is:

[i]ncome at that point in time when abnormalities in supply and demand or any additional transitory conditions cease to exist and the existing conditions are those expected to continue over the economic life of the property; projected income that is subject to change, but has been adjusted to reflect an equivalent, stable annual income.<sup>75</sup>

Concerning the garage income in Luepke's appraisals, the two reported years varied significantly from \$58,577 in garage income in 2010 to \$71,604 in 2011.<sup>76</sup> Luepke assigned an income value of \$72,000 for garage income.<sup>77</sup> It is apparent that there was at least an abnormality in the Subject Property's garage income in 2010. Income from the garages in 2011 standing alone does not reasonably indicate a stabilized garage income for the Subject Property. Moreover, there is no additional evidence to support that the income is typical for the market. If

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<sup>69</sup> See, E71:24-31; See also E73:24-31.

<sup>70</sup> See, E71:27-31; See also, E73:27-31.

<sup>71</sup> See, E71:25; See also E73:25.

<sup>72</sup> See, E71:43; See also, E73:43.

<sup>73</sup> See, E40:114; See also, E42:114.

<sup>74</sup> See, E71:43; See also, E73:43.

<sup>75</sup> *The Dictionary of Real Estate Appraisal*, at 274 (4th ed. 2002).

<sup>76</sup> See, E71:43; See also, E73:43.

<sup>77</sup> See, E71:43; See also, E73:43.

an owner's income and expense statement is reconstructed as part of the assessment of real property each item must be evaluated to ensure that it is typical of the market.<sup>78</sup>

Pickerel's appraisals contain opinions of value that are similar to the County Board's determinations. However, there were substantial errors in the calculations and equations in the appraisals which require correction. After correction, these appraisals indicate lower valuations of the Subject Property.

While Pickerel's opinion of rental unit income and garage income is properly constructed,<sup>79</sup> his determination of income from laundry service is problematic, as is his application of vacancy and collection loss to income from laundry service and other income.<sup>80</sup> The steps required for use of the income approach with direct capitalization may be summarized as: (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value.<sup>81</sup> A variety of techniques may be used to quantify various components of any application of the approach.<sup>82</sup>

Concerning his calculation of the laundry income, Pickerel derived the income based on \$5 per unit for all 410 units.<sup>83</sup> However, Pickerel also asserts that many of the units have washer and dryer hookups that affect the amount of income the Subject Property would obtain.<sup>84</sup> Pickerel asserted that competing apartments in the market obtain \$5 to \$15 per unit for laundry income per month.<sup>85</sup> Pickerel determined that \$5 was appropriate to apply to all 410 units to account for the units that supplied their own washer and dryer and therefore did not contribute income to the Subject Property in the form of laundry income.<sup>86</sup> The Commission disagrees with Pickerel's application of \$5 of laundry income to all 410 units. This amounts to an assumption

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<sup>78</sup> See, Association of Assessing Officers, *Property Assessment Valuation*, at 331-332 (3rd ed. 2010).

<sup>79</sup> See, E40:114 (\$3,281,760 rental income and \$100,980 garage income for tax year 2012); See also, E42:115 (\$3,336,480 rental income and \$112,200 garage income for tax year 2013).

<sup>80</sup> See, E40:124; See also, E42:125.

<sup>81</sup> See, The Appraisal Institute, *The Appraisal of Real Estate*, at 460-461 (14th ed. 2013).

<sup>82</sup> *Id.* at chs 21-26.

<sup>83</sup> See, E40:114; See also, E42:115.

<sup>84</sup> See, *Id.*

<sup>85</sup> See, *Id.*

<sup>86</sup> See, *Id.*

that of the 338 units in the Subject Property with washer and dryer hookups,<sup>87</sup> all 338 units spent at least \$5 at the Subject Property's laundry. We find that this assumption is unreasonable.

The evidence supports a range of values from \$5 to \$15 per unit. The Commission finds that based on the evidence \$10 is a more appropriate income estimate. The Commission disagrees that the income should be attributed to all 410 units. Instead, the Commission finds that the income should be limited to the units which were much more likely to use the laundry service, the 72 units without washer and dryer hookups.<sup>88</sup> This calculation acknowledges that the Subject Property obtains income from the services, but also acknowledges that most units provide the opportunity for renters to opt out of the service. Meanwhile, the increased income rate acknowledges that some occupants of the units with washer and dryer hookups will still use the services. The Commission therefore finds that the appropriate laundry income is \$8,640 annually.<sup>89</sup>

Additionally, when calculating the effective gross income (EGI), Pickerel applied a vacancy and collection loss to the laundry income and the income from "Other Income."<sup>90</sup> The vacancy and collection loss rates should not be applied to these service-related income items.<sup>91</sup>

The Commission finds that the EGI of the Subject Property for tax year 2012 is \$3,077,706.<sup>92</sup> The Commission finds that the EGI of the Subject Property for tax year 2013 is \$3,137,052.<sup>93</sup>

Pickerel's calculations of expenses are also problematic. Pickerel's comparable properties consisted of significantly fewer units than the Subject Property and there was no indication that the comparable properties had similar amenities including pools and tennis courts.<sup>94</sup> The closest comparable property in terms of size consisted of 191 units and indicated a range of expense ratios from 36.2% to 40.9% after removal of the property taxes as an expense.<sup>95</sup> Further examination of Pickerel's comparable properties' expenses indicates that as a rental property's

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<sup>87</sup> See, E40:112-113; See also, E42:113-114.

<sup>88</sup> See, *Id.*

<sup>89</sup> 72 units x \$10 x 12 months = \$8,640.

<sup>90</sup> See, E40:114; See also, E42:115.

<sup>91</sup> See, Association of Assessing Officers, *Property Assessment Valuation*, at 325-326 (3rd ed. 2010).

<sup>92</sup>  $(\$3,281,760 \text{ rental income} + \$100,980 \text{ garage income}) \cdot (0.9 (10\% \text{ V\&C})) + \$8,640 \text{ laundry income} + \$24,600 \text{ Other Income} = \$3,077,706 \text{ EGI.}$

<sup>93</sup>  $(\$3,336,480 \text{ rental income} + \$112,200 \text{ garage income}) \cdot (0.9 (10\% \text{ V\&C})) + \$8,640 \text{ laundry income} + \$24,600 \text{ Other Income} = \$3,137,052 \text{ EGI.}$

<sup>94</sup> See, E40:117-121; See also, E42:117-120.

<sup>95</sup> See, E42:120.

size increases so does the expense ratio.<sup>96</sup> Pickerel supports his determination by asserting that the Subject Property's historic expenses double counted items, and thus the approximately 40% expense ratio was not relevant without corrections. The Commission disagrees with Pickerel's expense ratio calculation.

The evidence from Pickerel's own comparable properties indicates that as the number of units increase so does the expense ratio,<sup>97</sup> and Comparable 5 from Pickerel's appraisal for tax year 2013, the comparable with the closest number of units, indicates an expense ratio of up to 46.8%.<sup>98</sup> Additionally, Slosburg adequately explained that none of the expenses had been double counted and that all of the expenses were actually related to service or work at the Subject Property. Based on the foregoing, the Commission finds that the appropriate expense ratio for the Subject Property is 40%.

The application of the 40% expense ratio results in a net operating income (NOI) of \$1,846,624 rounded for tax year 2012.<sup>99</sup> The application of the 40% expense ratio results in an NOI of \$1,882,231 rounded for tax year 2013.<sup>100</sup>

The Commission notes that all appraisals agree on the applicable capitalization rate of 10.77% rounded.<sup>101</sup> The Commission therefore finds that the actual value of the Subject Property for tax year 2012 is \$17,145,994.<sup>102</sup> And the Commission also finds that the actual value of the Subject Property for tax year 2013 is \$17,476,613.<sup>103</sup>

Nebraska law requires that the value of real property be placed on the tax rolls with specific delineations of the applicable actual value associated with land and the applicable actual value associated with improvements.<sup>104</sup> The income approach provides an aggregate value of all real property on the Subject Property and does not allocate the value attributable to land. Often the

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<sup>96</sup> Pickerel's expense analysis for tax year 2012 includes the following expense ranges from four comparable properties: (1) Comparable 1, a 143 unit complex, 29.4% to 32.8%; (2) Comparable 3, a 102 unit complex, 33.7% to 35.1%; (3) Comparable 2, a 54 unit complex, 17.7% to 25.4%; and (4) Comparable 4, a 24 unit complex, 21.2% to 23.7%. See, E40:117-121. Pickerel's expense analysis for 2013 includes an additional comparable property consisting of 191 units with expense ratios of 31.2% to 46.8%.

<sup>97</sup> *Infra*, FN 95.

<sup>98</sup> See, E42:120.

<sup>99</sup>  $\$3,077,706 \text{ EGI} \times .6 \text{ (40\% expenses)} = \$1,846,623$ .

<sup>100</sup>  $\$3,137,052 \text{ EGI} \times .6 \text{ (40\% expenses)} = \$1,882,231$ .

<sup>101</sup> See, E40:122-124; E42:123-125; E71:38-42; and E73:38-42.

<sup>102</sup>  $\$1,846,624 \text{ NOI} / .1077 = \$17,145,994$ .

<sup>103</sup>  $\$1,882,231 \text{ NOI} / .1077 = \$17,476,613$ .

<sup>104</sup> See, Neb. Rev. Stat. §77-1303 (2014 Cum. Supp.).

value attributable to land is derived from a sales comparison approach of vacant parcels. While the Commission is uncertain as to the County Assessor's process for deriving the value attributable to the land component of the Subject Property, which the County Board relied upon, the Commission notes that none of the parties disputed the allocation made by the County Assessor. The Commission finds that the portion of actual value derived from the above corrected income approach attributable to land value for each tax year is \$1,845,000.<sup>105</sup>

## 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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's determinations of value were arbitrary or unreasonable.

For all of the reasons set forth above, the decisions of the County Board are vacated and reversed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax years 2012 and 2013 are vacated and reversed.<sup>106</sup>
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 1,845,000
Improvements	<u>\$15,300,994</u>
Total	\$17,145,994

3. The taxable value of the Subject Property for tax year 2013 is:

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<sup>105</sup> See, E47:1

<sup>106</sup> 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.

Land	\$ 1,845,000
Improvements	<u>\$15,630,613</u>
Total	<u>\$17,476,613</u>

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
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 2012 and 2013.
8. This Decision and Order is effective for purposes of appeal on July 8, 2015.<sup>107</sup>

Signed and Sealed: July 8, 2015

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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<sup>107</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 ((2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.