

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 927

Decision Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential rental parcel improved with an 896 square foot home located at 5116 North 48 Street, Omaha, Douglas County, Nebraska. The Subject Property’s legal description is found in the Case File.
2. The Douglas County Assessor assessed the Subject Property at \$40,000 for tax year 2012.
3. Bel Fury Investments Group, LLC (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a \$30,900 valuation.
4. The County Board determined that the assessed value of the Subject Property was \$40,000 for tax year 2012.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on September 3, 2013, at the Omaha State Office Bldg., 1313 Farnam, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Scott Bloemer, Managing Member of Bel Fury Investments Group, LLC, appeared at the hearing on behalf of the Taxpayer.
8. Larry Thomsen and Kevin Corcoran, employees of the Douglas County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Profile contained in the Assessment Report submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$7,427 at a Douglas County Sheriff’s auction on May 19, 2010.
10. The Property Record Profile for the Subject Property indicates that the County Board’s \$40,000 determination for tax year 2012 includes \$6,800 for land and \$33,200 for the improvement component.
11. The County’s Assessment Report indicates that the County Board’s \$33,200 determination attributable to improvements for tax year 2012 is based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics

with market area sales.¹ The Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement.

12. The Assessment Report contains a one-page Property Valuation (“PVAL”) document that sets forth the following assessment history regarding the Subject Property:

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2012	8/7/2012	6800	33200	40000	County Board
2011	8/9/2011	6800	33200	40000	County Board
2010	12/13/2012	6800	29200	36000	TERC
2010	8/11/2010	6800	46300	53100	County Board
2010	3/6/2010	6800	46300	53100	Reappraisal by County Assessor
2005	3/19/2005	6800	48100	54900	Reappraisal by County Assessor
2003	3/14/2003	6800	31100	37900	Reappraisal by County Assessor
1999	5/21/1999	6500	31100	37600	TERC
1999	3/9/1999	6000	28800	34800	PRA
1996	3/16/1996	6000	26800	32800	Reappraisal by County Assessor

13. The Property Record Profile contains the following sales history regarding the Subject Property, which is derived from Form 521 Real Estate Transfer Statements:

Sale Date	Sale Price	Deed Type	Reception #	Book	Page #	Grantor
5/19/2010	\$7,427	Sheriff Deed	2010071910	2010	71910	DOUGLAS COUNTY SHERIFF

14. The Property Record Profile and the Market Calculation Detail document indicate that the Subject Property is located in Neighborhood 54 and Subdivision 60054. The Property Record Profile indicates that the Subject Property is included on County map number 54-0457.
15. The Property Record Profile indicates that the Subject Property is an 896 square foot residence built in 1962, with an effective age of 50 years. The Property Record Profile rates the Subject Property’s quality as “Average” and condition as “Fair.” The Assessment Report’s Market Calculation Detail document indicates that a \$10,000 reduction in value is attributable to this Fair condition rating as compared to an Average rating.
16. The Taxpayer submitted documentation and photos analyzing the sale/assessment history of three homes near the Subject Property in support of its assertion that the actual value of the Subject Property was \$30,900 for tax year 2012. This documentation includes screen-shots from the Douglas County Assessor’s website (Property Record Profiles were not submitted for any of the parcels), together with maps depicting the location of the parcels (all appear to be within 8 – 12 blocks of the Subject Property). The Taxpayer did not submit a fee appraisal of the Subject Property or other parcels at the hearing.
17. Mr. Bloemer stated that his Omaha-based business owns several residential rental properties in Omaha and the surrounding area. He also stated that, prior to the onset of

¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

the economic crisis in 2007, his business focused on purchase of distressed properties followed by repair and resale. After the onset of the economic crisis, however, Mr. Bloemer indicated that the business was forced to rent many properties in inventory due to the depressed real estate market.

18. The Taxpayer asserted that distressed or otherwise depressed transactions constituted the market in the Subject Property's market area in the aftermath of the economic crisis. The Commission notes that the Taxpayer did not submit documentation to support this assertion. The Commission also notes that the three parcels submitted for consideration by the Taxpayer were not subject to recent sale transactions.
19. The County's Assessment Report includes a "Sales Comparables" chart that sets forth three sales of Fair condition homes in the Subject Property's market area in 2011, each of which is within the acceptable two-year look-back period preceding the 2012 assessment date. These transactions generated sales prices amounting to \$55,500, \$42,000 and \$40,000. The \$40,000 sale that occurred in January 2011 involved the parcel located at 5206 North 48th St., which is in close proximity to the Subject Property located at 5116 North 48th St. and which was assessed at \$40,800 for tax year 2012 according to the Assessment Report. Based on a review of the Subject Property's valuation history charted above, it appears that the County Board's \$40,000 determination for tax years 2011 and 2012 is based on this January 2011 sale in the amount of \$40,000.
20. The Commission notes that the County's Assessment Report states as follows with respect to the sales included in the Sales Comparables chart: "Due to lack of similar property sales, had to go outside of the subject neighborhood for comps."

STANDARD OF REVIEW

21. The Commission's review of the determination of the County Board of Equalization is de novo.² "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."³
22. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁴ 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."⁵

² 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).

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

⁵ *Id.*

23. 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.⁶
24. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL VALUATION LAW

25. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁸
26. “Actual value, market value, and fair market value mean exactly the same thing.”⁹
27. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁰
28. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
29. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
30. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and 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.¹³

VALUATION ANALYSIS

31. The Taxpayer averaged the per square foot adjusted sale value of three parcels in close proximity to the Subject Property for purposes of arriving at its \$30,900 opinion of value. The Taxpayer’s approach can best be described as an attempt to value the Subject Property using the sales comparison approach.

⁶ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

⁸ 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).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

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

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

32. The Commission notes that averaging is not an acceptable part of the sales comparison approach. “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”¹⁴
33. The sales comparison approach has a defined systematic procedure that requires, among other steps, that the individual appraising the Subject Property “[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.”¹⁵
34. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁶ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371.¹⁷
35. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the three parcels submitted for consideration were truly comparable.
36. The Commission does note, however, that the Taxpayer did attempt to meet sales comparison approach requirements by using a 7% per condition-level adjustment to account for the higher ratings assigned to two of the three parcel sales submitted for consideration. In this regard, the Taxpayer applied a 7% condition adjustment to the parcel rated as Average on the Douglas County Assessor’s website screen-shot, and a 14% adjustment to the parcel rated as Good, which is two levels above the Subject Property’s Fair rating (the screen-shot for the other parcel sale analyzed by the Taxpayer assigns a Fair rating, which therefore did not necessitate an adjustment). While the Commission is unable to find that the Taxpayer’s sales comparison analysis constitutes clear and convincing evidence that the County Board’s \$40,000 determination for tax year 2012 is arbitrary or unreasonable, this Commissioner views the Taxpayer’s 7% approach as conservative and reasonable based on experience with condition adjustments rendered by the Douglas County Assessor’s Office in other cases. Thus, even though it is this Commissioner’s understanding that an appraisal offered by a non-licensed individual has rarely if ever constituted clear and convincing evidence that the County Board’s valuation determination was arbitrary or unreasonable, the Taxpayer’s efforts to produce useful information are noticed by this Commissioner. It is also this Commissioner’s view that a viable appraisal can be produced by a non-licensed property owner for ad valorem tax purposes in Nebraska.
37. Guidance for purposes of applying the sales comparison approach and other valuation methods is available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are

¹⁴ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 308.

¹⁵ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at pgs. 301-302.

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 141.

¹⁷ Neb. Rev. Stat. §77-1371 (Reissue 2009).

listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.

38. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

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

DISTRESSED SALES AS INDICATOR OF VALUE ANALYSIS

39. The Taxpayer asserted that the economic crisis that began in 2007 created an environment where distressed or otherwise depressed transactions were a significant factor in the Subject Property's market area in the period leading up to tax year 2012. Consequently, the Taxpayer asserted that distressed transactions such as foreclosures, bank sales and short sales are valid indicators of value under the sales comparison approach and should be considered by the County in its mass appraisal models.
40. The County's representatives stated that the County does not consider distressed transactions valid for use in its valuation models. They further indicated that the County Assessor's mass appraisal models used to value properties in the Subject Property's market area exclude foreclosure sales and other distressed sales that are deemed not arm's-length.
41. *The Dictionary of Real Estate Appraisal* defines an arm's-length transaction as follows: "A transaction between unrelated parties under no duress."¹⁸
42. In connection with the sales comparison approach to valuation, *The Appraisal of Real Estate* states as follows: "[s]ales that are not arm's-length...should be identified and rarely if ever used."¹⁹
43. As indicated above in the General Valuation Law section, Nebraska Statutes section 77-112 references arm's-length transactions in defining actual (i.e., market) value, stating as follows:

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.²⁰

¹⁸ *The Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute, 2002, at p. 18.

¹⁹ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 304.

²⁰ Neb. Rev. Stat. § 77-112 (Reissue 2009).

44. In addition to the factors referenced above in Nebraska Statutes section 77-112, *Property Assessment Valuation* states that actual or market value is derived from transactions involving “reasonable time for exposure to the market.”²¹
45. General guidance regarding consideration of the economic crisis by the County in the residential mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.²² For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.²³ Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**²⁴

46. The New Jersey Tax Court stated as follows regarding consideration of “current market conditions” in a 2013 opinion that reduced the assessed value of the Borgata casino from \$2.26 billion to \$880 million in tax year 2009 and to \$870 million in tax year 2010 due to the adverse impact of the national economic crisis and increased gaming competition (the \$2.26 billion assessment stemmed from a reappraisal for tax year 2008, similar to the experience of the Taxpayer herein):

The national economy began to soften in late 2007, primarily due to the subprime housing crisis. By October 1, 2008, the economy suffered a significant downturn triggered by the collapse of the mortgage markets and the failure of Bear Stearns and Lehman Brothers. The government-sanctioned bailout of Bear Stearns as a banking institution “too big to fail” set off alarms concerning the stability of the American banking system. The mid-September 2008 collapse of Lehman Brothers led to a sharp drop-off in the stock market and the beginning of the worst recession since the Great Depression. . . .

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October 1, 2009, the macro economy had entered into what many commentators termed a ‘New Normal,’ meaning that the developed nations would enter into a prolonged period of low growth, high unemployment and a need for de-leveraging. This would add to the uncertainty surrounding the

²¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 15; See, *The Appraisal of Real Estate*, 13 ed., Appraisal Institute, 2008, at pgs. 54-77

²² *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

²³ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²⁴ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

gaming industry in general and in Atlantic City specifically, as of the valuation date.” Unemployment rates started to increase significantly in 2008 and were still rising as of September 2009. This fact is significant because low unemployment rates are indicative of increased consumer spending on such discretionary items as gaming and entertainment. The perception that the nation’s economic trouble was not a transitory downturn, but a long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.²⁵

47. The Illinois Court of Appeal stated as follows regarding consideration of “current market conditions” in a 2012 opinion affirming a lower court’s approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

Our courts today face a similar situation as that faced by the court in [1937] *Levy* during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.²⁶

48. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.²⁷
49. With respect to whether distressed sales can be considered reliable indicators of market value in the property tax context, several courts outside of Nebraska have issued opinions in the aftermath of the economic crisis.²⁸ For instance, in 2012 the Oregon Tax Court considered whether “foreclosures and short sales characterize the market for the subject

²⁵ *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at pgs. 1 – 2, 8 – 9 (New Jersey Tax Court 2013).

²⁶ *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

²⁷ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

²⁸ *Greene v. Benton County Assessor*, TC-MD 110687N (Oregon Tax Court 2012); *Voronaeff v. Crook County Assessor*, TC-MD No 110361C (Oregon Tax Court 2012); *Brashnyk v. Lane County Assessor*, TC-MD No 110308 (Oregon Tax Court 2011); *Witkin v. Lane County Assessor*, TC-MD No 110460C (Oregon Tax Court 2012); *Umpqua Bank v. Lane County Assessor*, TC-MD No 110594N (Oregon Tax Court 2012); *Columbus City School Dist. Bd. of Education v. Franklin County*, 983 N.E.2d 1285, 134 Ohio St.3d 529 (Ohio Supreme Court 2012) (bank sale deemed arm’s-length because bank acted like a typically motivated seller); *Cattell v. Lake Cty. Bd. of Revision*, 2010-Ohio-4426, 2009-L-161 (Ohio Court of Appeals, Eleventh District 2010) (bank sales deemed arm’s-length where properties were listed with a realtor on the open market).

property” in *Greene v. Benton County Assessor*.²⁹ In noting the view of an Idaho assessment official, the Court stated as follows:

The Taxpayer testified that, although he is not a licensed broker or appraiser, he owns 11 properties and is experienced in real estate. As support that the subject property sale is representative of its real market value, Greene provided an article by Alan Smith (Smith), Deputy Assessor, Ada County Assessor’s Office, Boise, Idaho, entitled “Distressed Sales: Anomaly or Market Value?” Smith states that “bank-owned resales, if they are marketed by a realtor, or through a multiple listing service for a time period considered to be an average exposure to the market, will likely be very close to fair market value in this type of market.”³⁰

50. In holding that the Taxpayer failed to prove that foreclosures or short sales characterized the market under the sales comparison approach, the Oregon Tax Court in *Greene* indicated that proof that the “majority” of market area sales were distressed is required:

[P]roperty purchased through foreclosure may be “a voluntary *bona fide* arm’s-length transaction between a knowledgeable and willing buyer and a willing seller.” *Ward v. Dept. of Revenue*, 293 Or 506, 508, 650 P2d 923 (1982). “There are narrow exceptions determined on a case-by-case basis to the holding that bank-owned property sales are not typically representative of real market value.” *Brashnyk v. Lane County Assessor (Brashnyk)*, TC-MD No 110308 at 8, WL 6182028 *5 (Dec 12, 2011). “[W]here the majority of sales are distress, it would seem that that kind of sale would provide a more accurate reflection of the market.” *Morrow Co. Grain Growers v. Dept. of Rev. (Morrow)*, 10 OTR 146, 148 (1985)..... Plaintiffs have not presented any evidence that foreclosures and short sales characterize the market for the subject property. Plaintiffs provided a list of sales that occurred between 2003 and 2011 in the subject property neighborhood; unadjusted sale prices in 2008, 2009, and 2010, ranged from \$335,000 to \$452,000. It is not clear which, if any, of those sales were foreclosures or short sales. Plaintiffs’ purchase of the subject property for \$295,000 in May 2009 is the lowest sale price identified for any of the years, 2003 through 2011. “Usually, one sale does not make a market.” *Truitt Brothers, Inc. v. Dept. of Rev.*, 302 Or 603, 609, 732 P2d 497 (1987).³¹

51. The Oregon Tax Court has also considered three Oregon Department of Revenue directives issued to county assessors in 2009 and 2010 regarding consideration of distressed transactions for purposes of the sales comparison approach and ratio studies.³²

²⁹ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

³⁰ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 3 (Oregon Tax Court 2012).

³¹ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

³² *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011); *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 8-9 (Oregon Tax Court 2012).

For instance, in *Brashnyk v. Lane County Assessor*, the Oregon Tax Court addressed whether bank sales were valid indicators of market value and quoted the Oregon Department of Revenue’s memorandum entitled “Valid Market Sales for Oregon Assessment Purposes” issued to county assessors on January 21, 2009:

‘[s]o long as the nominal standards for an acceptable comparable sale are met – arm’s length, voluntary, knowledgeable parties, exposure to the market, cash equivalent, etc. – such [bank] sales are appropriate to consider. Under the market value definition standard, any sale that meets those criteria should be considered as a potential comparable.’³³

52. In *Voronaeff v. Crook County Assessor*, the Oregon Tax Court addressed whether short sales were valid indicators of market value and quoted the Oregon Department of Revenue’s memorandum entitled “Valid Market Sales for Oregon Assessment Purposes” issued to county assessors on January 21, 2009:

‘[Short sales] should be carefully reviewed to determine if they meet the relevant criteria for a comparable. The mere fact that there is, presumably, some duress on the part of the seller (the upside down owner) that prompts the sale, does not itself disqualify the transaction from consideration, especially when there is some duress in the market. This situation is analogous to the owner losing his job and selling because he can’t make the mortgage payments. *We wouldn’t discount that sale simply because the owner was very motivated to sell* (some duress) so long as the sale was an arm’s-length with adequate exposure and contained no unusual financing terms or elements that couldn’t be adjusted out.’³⁴

53. In *Voronaeff v. Crook County Assessor*, the Oregon Tax Court also included the following excerpt from a letter from the Oregon Department of Revenue to the Crook County Assessor dated February 1, 2010:

‘We recommend you analyze all sales, foreclosure, short or otherwise, and determine if they represent market conditions. If elements of a particular sale raise reasonable doubt that the sale doesn’t represent the market, prevailing wisdom suggests eliminating that sale in the market value study. However, in a declining market, foreclosures and short sales are common and in many cases can and should be used in market value studies. *If, in your opinion, the current economics and market conditions, as of the valuation date, indicate some level of distress is a common market characteristic, it is appropriate to include such sales in a comparable sale’s value analysis or a ratio study.*’³⁵

³³ *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011).

³⁴ *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 9 (Oregon Tax Court 2012). [Emphasis in original Memorandum.]

³⁵ *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at pgs. 8-9 (Oregon Tax Court 2012). [Emphasis in original Letter.]

54. The Nebraska Department of Revenue Property Assessment Division's Sales File Practice Manuals for the beginning of the economic crisis in tax year 2008 through tax year 2011 do not address circumstances where foreclosures or short sales could be reliable indicators of market value. Nebraska's Sales File Practice Manual for tax year 2012, however, states as follows:

A deed transfer in lieu of foreclosure is a deed that is transferring the real property back to the original owner prior to the property being foreclosed on and should be considered a non-arm's length transaction.

A sale in which a lien holder is the buyer may be in lieu of a foreclosure or a judgment and the sale price may equal the loan balance only.

In a market where foreclosure properties are abundant, buyers may have comparable foreclosure properties to choose over conventional listings. Weak economic conditions in an area may cause the general residential and commercial market to meet the market of the foreclosure property resales, making foreclosures valid indicators of market value for non foreclosure properties.³⁶

55. Nebraska's 2011 and 2012 Sales File Practice Manuals also state as follows with respect to consideration of sales from banks for purposes of determining whether such a transaction is arm's-length:

Sales from banks should not be automatically considered a non-arm's-length transaction especially if you do not have an abundant supply of sales. Typically, values will be on the low end of the value range, but they may be considered arm's length transactions and included in the ratio study if all other criteria for being an open market arm's-length transaction are met.³⁷

56. The Taxpayer submitted documentation analyzing the sale/assessment history of three homes located 8 - 12 blocks from the Subject Property in support of its assertion that the actual value of the Subject Property was \$30,900 for tax year 2012. These parcels sold for significantly less than the year-of-sale assessed value (see sale/assessment history below in "Equalization Analysis" section), which creates concern whether the County's mass appraisal model accurately determines actual value in the Subject Property's market area (the screen-shots from the Douglas County Assessor's website indicates that all three sales were "Valid").
57. The Taxpayer did not, however, provide analysis regarding the ratio of distressed sales to sales considered valid by the County in the market area. Therefore, it is not clear whether distressed transactions constitute either a significant portion or a majority of the total market area sales in the two-year period preceding the assessment date that is analyzed by the County for purposes of constructing its mass appraisal models.

³⁶ 2012 Statewide Equalization Exhibit 107, p. 31.

³⁷ 2011 Statewide Equalization Exhibit 107, p. 117; 2012 Statewide Equalization Exhibit 107, p. 32.

58. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States, including some markets in Nebraska. Nonetheless, the Commission finds that the Taxpayer did not provide sufficient evidence to quantify the impact of the economic crisis on the actual value of the Subject Property.

GENERAL EQUALIZATION LAW

59. “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.”³⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁹ 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.⁴⁰
60. 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.⁴¹
61. 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.⁴² 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.⁴³
62. The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁴ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”⁴⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁶
63. “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.”⁴⁷

EQUALIZATION ANALYSIS

64. The Taxpayer submitted documentation and photos analyzing the sales/assessment history of three parcels. This documentation includes screen-shots from the Douglas

³⁸ *Neb. Const.*, Art. VIII, §1.

³⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁴⁰ *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).

⁴¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴³ *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).

⁴⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁶ *Id.* at 673, 94 N.W.2d at 50.

⁴⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

County Assessor's website (Property Record Profiles were not submitted for any of the parcels), together with maps depicting the location of the parcels (all appear to be within 8 – 12 blocks of the Subject Property, which is located at 5116 North 48 Street).

65. According to the respective screen-shots from the Douglas County Assessor's website, the parcels submitted for consideration are located at 4030 Kansas Avenue (834 sq. ft. Ranch built in 1953, Average condition; \$35,000 "Valid" sale in August 2011; 2011 & 2012 assessment: \$55,400 - \$66.44 per sq. ft.); 6007 North 47th Street (912 sq. ft. Raised Ranch built 1961, Good condition; \$44,500 "Valid" sale in August 2011; 2011 & 2012 assessment: \$56,100 - \$61.50 per sq. ft.); and 4724 Fontenelle Blvd. (1,072 sq. ft. 1.5-story built in 1920, Fair condition; \$29,000 "Valid" sale in August 2011; 2011 assessment: \$30,900; 2012 assessment: \$27,900 - \$26 per sq. ft.).
66. In comparison to the above parcels, the County assigned a Fair condition rating to the 896 square foot Subject Property, which is one level inferior to an Average rating and two levels less than a Good rating. The Subject Property was built in 1962, with an effective age of 50. The Subject Property's 2012 assessment amounts to \$44.64 per sq. ft.
67. The County's representatives stated that they could not opine regarding the similarity of the Subject Property in comparison to the three parcels submitted by the Taxpayer because Property Record Profiles were not submitted.
68. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴⁸ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.⁴⁹
69. The Commission notes that the parcel located at 4724 Fontenelle Boulevard is the only parcel that is assessed on a per square foot basis less than the Subject Property in tax year 2012 (\$26 psf v. \$44.64 psf), so the following "similarity" analysis focuses thereon.
70. The Commission finds that the parcel located at 4724 Fontenelle Boulevard is not similarly situated or comparable for equalization analysis purposes in substantial part because of size (1,072 v. 896 sq. ft.), age (1920, 93-year effective age v. 1962, 50-year effective age) and style (1.5-story without attached garage v. Raised Ranch with attached garage).
71. The Commission also notes that its equalization analysis is limited because Property Record Profiles were not provided for any of the parcels submitted for consideration by the Taxpayer.
72. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was substantially less than 100% for tax year 2012 (actually, as indicated above, the 2012 assessments for two of the three parcels possibly exceed actual value, assuming the August 2011 sales thereof reflect actual value). Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.

⁴⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

CONCLUSION

- 73. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
- 74. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

- 1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.
- 2. That the taxable value of the Subject Property for tax year 2012:

Land	\$ 6,800
Improvements	\$ 33,200
Total	\$ 40,000

- 3. This decision and order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
- 4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
- 5. Each Party is to bear its own costs in this proceeding.
- 6. This decision shall only be applicable to tax year 2012.
- 7. This order is effective on March 12, 2014.

Signed and Sealed: March 12, 2014.

Thomas D. Freimuth, Commissioner