

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wilfred M. Looby Trust,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 12R 290

Decision and Order Affirming the
Determination of the Sarpy County Board

For the Appellant:

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

For the Appellee:

Nicole O’Keefe,
Deputy Sarpy County Attorney

This appeal was heard before Commissioners Nancy J. Salmon and Thomas D. Freimuth.
Commissioner Salmon affirming, Commissioner Freimuth dissenting.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Sarpy County. The parcel is improved with a 2,284 square foot home. The legal description of the parcel is found at Exhibit 4. The property record card for the subject property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$275,940 for tax year 2012.¹ Wilfred M. Looby Trust (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$260,000.² The Sarpy County Board determined that the taxable value for tax year 2012 was \$275,940.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on December 4, 2012.

¹ E4:1.

² E4:1.

³ E3:1.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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."⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ 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.¹⁰

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

⁴ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Botdorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”¹¹ 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.”¹²

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.¹³

“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.”¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Taxpayer offered into evidence an appraisal by Robert Charlson determining the value of the Subject Property as of June 20, 2010.¹⁹ Charlson certifies that his appraisal was prepared

¹¹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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

¹⁴ *Id.*

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

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

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ E21.

using professionally approved methods.²⁰ Therefore, the Commission finds that the Taxpayer's appraisal for the Subject Property constitutes sufficient competent evidence to rebut the presumption in favor of the County Board.²¹ The burden is still on the Taxpayer to show by clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable.²²

The County Board arrived at its opinion of value using the cost approach.²³ The cost approach is a statutorily permitted method for determining the actual value of real property for ad valorem tax purposes.²⁴ Tim Ederer, a Sarpy County Appraiser, inspected the Subject Property May 2009 as part of the valuation process. The cost approach includes six steps:

(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (5) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.²⁵

The actual value of the land component of the Subject Property was not put in question. The County Appraiser's cost worksheet is found in Exhibit 4 pages 4-5.

Ederer testified that because of his observation during his inspection of the Subject Property he assigned the Subject Property a 26% physical depreciation, 20% functional depreciation, and changed the condition of the Subject Property to Fair.²⁶ Ederer gave a 75% physical depreciation

²⁰ E21:11.

²¹ See, *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. Of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²³ E4.

²⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

²⁶ E4:5.

to the deck.²⁷ Ederer testified that he determined the cost to cure these items of deferred maintenance using professionally accepted appraisal techniques. He then used the cost to cure the defects as the basis for his opinion of the level physical and functional depreciation. This technique is a professionally accepted method for quantifying physical and functional depreciation.²⁸

Ederer also testified that each year he reviews the sales in Sarpy County to determine the level of physical depreciation associated with the effective age of real property. Additionally, Ederer testified that each year he compares his depreciated replacement cost new and the sales price for properties with qualified sales to determine if there is any economic depreciation or appreciation affecting the properties in a given neighborhood. Ederer provided the Commission with the Neighborhood Values,²⁹ Market Area Lot Sales,³⁰ and Market Area Sales Report.³¹ Ederer testified that he also considered sales from June 30, 2011, to January 1, 2012, as well as some older sales going back to July 01, 2008. Based on his review of market data, Ederer assigned the Subject Property 4% appreciation.³² The Commission notes that there was only one sale within the normal look back window.³³

Ederer's final opinion of value was \$275,940.³⁴ The County Board adopted this opinion of value.³⁵

Looby testified that there were several items of deferred maintenance at the Subject Property. He asserted that it would cost \$18,000 to fix the deck, \$16,000-\$18,000 to fix the HVAC, \$11,000 to fix the geo-thermal well, \$2,000-\$2,500 for retaining walls, \$29,000 - \$20,000 for windows, and \$21,000 for sliding glass doors. He also asserted that the garage doors needed to be repaired. He asserted that there is running water at the Subject Property but that the high levels of lead prohibited its ingestion.

Jo Boyles, a CBS realtor with 9 years of experience, testified that the number of sales was lower than before the economic slowdown. She testified that the condition of a property affects the sale of the property. Boyles constructed a market analysis report for the Subject Property

²⁷ See, E4:5.

²⁸ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 278 and 283-84 (3rd ed. 2010).

²⁹ E10.

³⁰ E11.

³¹ E12.

³² E4:5.

³³ E12.

³⁴ E4:5.

³⁵ E1.

found at Exhibit 23. Boyles asserted that as a realtor she would list the property at \$240,000 to \$250,000. She asserted that this price was based upon the statements from others that the items listed in Exhibit 23 were no longer functional. She asserted that the only real value left in the Subject Property was the land value.

Robert Charlson, a licensed appraisal in Nebraska, testified that he appraised the Subject Property in 2008, and his appraisal is contained in Exhibit 20. He testified that he inspected the Subject Property in October 20, 2008, Charlson's observations are included in his report.³⁶ Additionally, Charlson made an adjustment for the condition to below average. Charlson also performed a second appraisal on the Subject Property as of June 30, 2010.³⁷ Charlson testified that this was an update of the 2008 appraisal. Charlson testified that he again provided a list of observations from an inspection associated with the 2010 appraisal but did not list the minor issues he saw. Charlson was also unaware of some of the issues associated with the Subject Property as of January 1, 2012. Charlson testified that the cost approach was not a reliable method for determining the actual value of the Subject Property because of the age of the improvements and the amount of depreciation.³⁸

Charlson valued the property in both appraisals using the sales comparison approach.³⁹ For his 2010 appraisal, Charlson used three alleged comparable properties which were not located within the Subject Property's neighborhood.⁴⁰ Charlson testified that he had used sales from other neighborhoods because there were no available sales in the Subject Property's neighborhood and he felt that his comparable properties were the most comparable properties he could find. The Commission notes that the comparable properties are located at varying distances from the Subject Property: Comparable 1 is 4.17 miles away, Comparable 2 is 19.73 miles away, and Comparable 3 is 14.55 miles away.⁴¹ Charlson testified that he limited the sales he considered to sales within a 1 year time frame, because the market in 2010 had changed so much that it was inappropriate to use older sales.

Charlson's 2010 appraisal indicates downward adjustments totaling \$70,000 to all comparable properties due to the Subject Property's inferior condition and effective age due to

³⁶ E20:4.

³⁷ E21.

³⁸ See also, E21:5.

³⁹ E20; E21.

⁴⁰ E21:3.

⁴¹ E21:10.

the deferred maintenance associated with the Subject Property.⁴² The Commission notes that these adjustments were based on knowledge obtained from MLS listings and drive by inspections.⁴³ Charlson testified that he quantified these adjustments utilizing his personal appraisal experience. Charlson asserted that his opinion of value would be different from his 2010 appraisal for January 1, 2012, due to additional deferred maintenance.

Charlson asserted that he would call the condition of the Subject Property “Poor” with the new items of deferred maintenance. He did not quantify the impact in the change of condition.

C. Analysis

The Commission notes that Ederer gave an adjustment of \$72,000 for deferred maintenance in his 2012 cost approach,⁴⁴ and Charlson gave an adjustment of \$70,000 for deferred maintenance.⁴⁵ While Charlson testified that his adjustment for deferred maintenance would be greater, the Commission also notes Charlson has not inspected the Subject Property since June 30, 2010. Additionally, the Commission notes that while the comparable sales used in Charlson’s 2010 appraisal were within a year of his appraisal date, the sales occurred approximately a year and a half to two years before the date of assessment.⁴⁶ While Charlson asserted that based on testimony he heard during the hearing he would revise his opinion of value even lower for January 1, 2012, the Commission notes that this opinion was not based on a review of the market or sales which have occurred since June 30, 2010.

The Commission finds that Boyles market analysis report is ambiguous and finds the conclusions of limited probative value. The Commission notes that the statistics provided encompass all single family residential properties in the Omaha Market Area without adjustments to significant differences including size, style, age, or location.⁴⁷ The limited value of this report is indicated by the statistics which assert an average sale price for single family residences in the Omaha Market Area of around \$160,000 from June 2011 to June 2012.⁴⁸ Boyles asserted that the Subject Property was worth \$240,000 to \$250,000. This would indicate that the Subject Property is not an average home for purposes of the statistics found in Boyles’

⁴² E21:3.

⁴³ E21:3.

⁴⁴ E4:5.

⁴⁵ E21:3.

⁴⁶ E21:3.

⁴⁷ The Commission notes that for purposes of the market analysis report the Omaha Market Area is not defined.

⁴⁸ See, E23:3-5.

market analysis report. Even if the market analysis report had strong probative value, the Commission notes that it indicates a small increase in the actual value of real property between tax years 2010 and 2012.⁴⁹ Additionally, the Commission notes that her range of listing prices is lower than either appraiser's opinion of value.

Further, the Commission notes that the County Board's value was based on a professionally accepted mass appraisal technique. Ederer's testimony indicates that he followed commonly accepted mass appraisal techniques and requirements when deriving the actual value of the Subject Property using the cost approach including examining market evidence. The County Board's determination is clearly explained by Ederer's Cost Detail. It is obvious that the Appellant disagrees with the County Board's determination, but that does not make the County Board's determination ambiguous or unexplained. While the dissent asserts that the application of a positive 4% economic factor was not understandable, Ederer testified that the appreciation was based on a review of market sales, and the County Assessor's assessment clearly indicates that:

“[The County Assessor's Office] also utilize[s] the sales within a particular market area to directly calibrate the specific market within each market area. The adjustment is reflected within the economic depreciation field. Both physical and economic factors are reflected on the property record cards.”⁵⁰

The testimony and evidence therefore clearly indicate that the 4% appreciation factor is not based on a general opinion of any global, regional, or area market, but instead is focused on the smallest derived market. This is reasonable.

Changes in the local market are depicted within the local market data. In the assessment of real property any changes in the global or national economic environments are only relevant to the extent there is a measurable impact within the local market; it is possible for values in a local market to be decreasing during a global boom or increasing during a global depression. It is the impact on the local market factors which contribute to the actual value of a property, as depicted by local market factors, which is relevant. Information that explains why the local

⁴⁹ See, E23:3-5.

⁵⁰ E2:1.

market factors are changing may be important for policy reasons, but it is the quantified impact on the local market that matters in appropriately determining the actual value of real property.

The macro economic climate is irrelevant to the determination of the actual impacts on the local market unless that impact on the local market conditions can be quantified. Cases wherein courts from other jurisdiction reference a “Great Recession” and rely upon the macro economic climate to determine the appropriate weight to be given to sales data for use in the determination of actual value have limited, if any, probative value in quantifying the impact of any economic events on local markets within Nebraska.

The Commission notes that the sales used by Ederer to determine the 4% appreciation factor, and the sales used by Charlson in his 2010 appraisal, occurred as early as 2008, four years prior to the date of assessment. There is, therefore, a consensus among all experts at the hearing that it was appropriate to consider sales from this time frame when setting the value for the Subject Property for tax year 2012.

The dissent asserts that in *County of Lancaster v. Union Bank & Trust Col. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb.2011), the Nebraska Supreme Court considered “ ‘current market conditions’ in the aftermath of the economic crisis.” In its recitation of the evidence presented to the lower court, the Nebraska Supreme Court included testimony of witnesses that the real estate market in Lincoln, Nebraska was not strong at the time of an auction sale of the real property in that case, but the Court in *In re Estate of Craven* did not rely on the weak market in making its determination, nor did it address an economic crisis.⁵¹ In fact, other than mentioning that witnesses felt that the Lincoln, Nebraska real estate market was not strong sometime after July 17, 2008, the Court did not discuss the strength of the real estate market at all. Instead the Court focused on the lack of truly comparable properties in the market, horrible condition of the subject property, and ample evidence in the appeal, while limiting their holding to the facts in the case and cautioning that any determination that auction price is better evidence than appraisal evidence must be based on similar ample evidence.⁵²

The Commission has reviewed the specific facts of this case and finds that this case is substantially different than *In re Estate of Craven*. The real property at issue in *In re Estate of Craven* was sold at a well-attended auction, and the Nebraska Supreme Court found that there

⁵¹ *Id.* at 125, 794 N.W.2d at 409.

⁵² *Id.* at 128-30, 794 N.W.2d at 409-11.

was ample evidence for the lower court to reasonably conclude that the sale price constituted the best evidence of value given the extreme physical depreciation of the real property. There is no sale price of the Subject Property in this case.⁵³ Instead there are competing opinions of value.

The burden is on the Taxpayer to prove by clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary.⁵⁴ The County Board's decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.⁵⁵ "A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion."⁵⁶ The appraisal of real property is not an exact science.⁵⁷ It is possible for two individuals to arrive at different yet equally reasonable and reasoned opinions of value. The burden is not met by a mere difference of opinion.⁵⁸ The Commission finds that while the Taxpayer's opinion of value is reasonable, there is not clear and convincing evidence that the County Board's decision is not as well.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied/the decision of the County Board is vacated and reversed.

⁵³ The Commission notes that Looby purchased the Subject Property for \$285,100 in August 2012; a sale price that was approximately \$25,000 greater than the Charlson's opinion of value and approximately \$10,000 than the County Board's determination. However, because this purchase was not arm's length, the Commission gives it no probative weight.

⁵⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁵⁵ See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999).

⁵⁶ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

⁵⁷ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁵⁸ *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

VI. 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 2012 is affirmed.⁵⁹
2. The assessed value of the Subject Property for tax year 2012 is \$275,940.
3. 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.).
4. Any request for relief, by any party, which is not specifically provided for by this decision and Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2012.
7. This Decision and Order is effective for purposes of appeal on August 4, 2014.

Signed and Sealed: August 4, 2014

Nancy J. Salmon, Commissioner

SEAL

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.

Commissioner Freimuth, dissenting,

I. OVERVIEW

The County Board's Referee for tax year 2012 agreed with the Taxpayer's \$260,000 appraisals of the Subject Property in 2008 and 2010 because the property had been vacant since

⁵⁹ 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.

2008 and because it required “substantial repair and updates.” This \$260,000 valuation is supported by the testimony and Comparative Market Analysis (“CMA”) submitted by real estate agent Jo Boyles, which indicate that the value of the Subject Property was \$240,000 - \$250,000 for tax year 2012 purposes. Thus, because the cost valuation approach used by the County Assessor is problematic in terms of reliability due to the age of the Subject Property and the economic crisis, I would find that the County Board’s reliance thereon for its \$275,940 determination for tax year 2012 is unreasonable or arbitrary. I would also find that \$260,000 is the best evidence of value for tax year 2012, given the fact that the Subject Property has been vacant since 2008 and is subject to significant deferred maintenance issues in the aftermath of the 2007 – 2008 economic crisis.

II. SUMMARY OF THE EVIDENCE

- A. The Subject Property is improved with a residence built in 1980. Wilfred Looby and his spouse resided in the home from 1980 until Mr. Looby, who survived his Mrs. Looby, passed away in 2008. Upon Mr. Looby's death in 2008, the Subject Property was held in the Wilfred M. Looby Trust (herein referred to as the “Taxpayer”). Mr. Looby's son, W. Henry Looby, has been trustee of the Taxpayer since Wilfred Looby's death in 2008.
- B. The Property Record Card contains the following assessment history regarding the Subject Property:⁶⁰

2002: \$267,216	2008: \$340,000
2003: \$278,876	2009: \$260,000
2004: \$281,064	2010: \$287,270
2005: \$305,733	2011: \$280,330
2006: \$316,400	2012: \$275,940
2007: \$322,013	

- C. The basis of the appeal by the Taxpayer is summarized as follows on Schedule "B" of its Appeal to the Commission:

The Sarpy County Board of Equalization did not adequately incorporate the appraisal of the Subject Property prepared by Robert Charlson of

⁶⁰ E7:1.

Charlson Appraisal Service provided by the Property Owner of the Subject Property in the valuation protest materials reflecting an actual value of the property in the amount of \$260,000, market analysis of Jo Boyles with CBS Real Estate, and testimony of current repairs and deferred maintenance required.

- D.** As indicated above, the Taxpayer relies on its appraiser's opinion of value in the amount of \$260,000 contained in appraisals dated 2008 and 2010. The Taxpayer also relies on the County Board's Referee's 2012 tax year opinion in the amount of \$260,000 and a real estate agent Jo Boyles' analysis indicating a value lower than \$260,000.
- E.** Mr. Looby testified regarding the content of the Taxpayer's Property Valuation Protest Form 422, which indicates that the County Board's Referee's recommendation amounted to \$260,000 for tax year 2012. Mr. Looby testified that the written Referee recommendation states as follows: "Appraisal of \$260,000 in 2008. Property has been vacant since then and testimony indicates that it needs substantial repair and updates. Recommend that additional depreciation be applied to improvements."
- F.** Mr. Looby testified that his father faced significant health challenges during the last 10 years of his life, and that he was very sick and battling for his life approximately five years prior to his death. He also testified that his father did not maintain or improve the Subject Property prior to his death, with the exception of replacement of approximately two windows. He further testified that estate litigation in the aftermath of his father's death prevented any action to address significant deferred maintenance items, and that the 2007 – 2008 economic crisis depressed the market for homes where the Subject Property is located.
- G.** Robert Charlson, the Taxpayer's appraiser who authored 2008 and 2010 appraisals that valued the Subject Property at \$260,000, testified that the Subject Property was worth less than 260,000 as of the date of hearing before the Commission in December 2012 based on exterior inspections from his car just prior thereto. He also stated that he relied in part on Multiple Listing Service ("MLS") information to complete his 2010 appraisal, and that real estate agents are diligent in terms providing accurate MLS information in the aftermath of the economic crisis.

- H.** Charlson’s appraisals state that the cost approach relied upon by the County Board is not reliable in the case of an older improved parcel such as the Subject Property, due to difficulty estimating accrued depreciation.⁶¹
- I.** Real estate agent Jo Boyles, who has lived in the lake development where the Subject Property is located since 1991, also testified on behalf of the Taxpayer, and the Commission received her June 2010 CMA in evidence at Exhibit 23. Ms. Boyles’ testimony and her cover letter received in evidence at pages 1 and 2 of Exhibit 23 updated her June 2010 CMA to July 9, 2012.⁶² Ms. Boyles’ CMA indicates an updated Subject Property value in the amount of \$240,000 – \$250, 000. She testified that \$220,000 was the highest verbal offer received while the property was listed prior to the assessment date, and that interviews with prospective buyers lead her to conclude that the home would be likely be razed if ever sold due to its age and deteriorated condition.
- J.** Ms. Boyles’ testimony and her CMA documentation indicate that the real estate market in the Omaha metropolitan area where the Subject Property is located experienced difficulty in the aftermath of the economic crisis.⁶³ Her testimony also indicated that any positive Omaha metropolitan area real estate market activity prior to 2012 stemmed from the first-time home-buyer tax credit implemented by the federal government to address the economic crisis.
- K.** Mr. Looby’s testimony indicated that a Sarpy County Court Probate Judge ordered the sale of the Subject Property to him for \$285,100 on or around August 1, 2012.⁶⁴ He also testified that this judicial sale stemmed from a “closed auction” whereby the Probate Judge set a floor on bids at or near assessed values near the time prior to 2012 when he issued his Court Order establishing bidding process parameters (as indicated in the chart above, the Subject Property’s assessed value was \$287,270 in tax year 2010 and \$280,330 in tax year 2011). Mr. Looby further testified that the heirs of the elder Mr. Looby’s Estate agreed that assessed value should establish the bid floor. Finally, Mr. Looby stated that his \$285,100 bid was the

⁶¹ See, E21:5.

⁶² See, E23. Ms. Boyles testified that the facsimile copy of her update letter found at pages 1 and 2 of Exhibit 23 indicates an effective CMA date of July 9, 2012 – this date appears in the upper left corner of pages 1 and 2 of Exhibit 23.

⁶³ The majority contains language indicating that some of the documentation included in the CMA prepared by Ms. Boyles indicates a small increase in the actual value of real property in the Omaha area between tax year 2010 and 2012. I note that the first-time homebuyer credit in effect from 2008 through mid-2010 was a federal initiative that artificially supported some real estate values for a period of time.

⁶⁴ See, E2 (indicates judicial sale ordered as a part of the elder Mr. Looby’s probate proceeding occurred on 7/31/12).

only qualifying bid, although his sibling submitted a \$315,000 bid that did not meet the requirements of the Court Order that established bidding parameters.

- L. The County Board relied on the County Assessor's cost approach model for purposes of its \$275,900 determination for tax year 2012. The County's expert asserted that its cost valuation sufficiently addresses deferred maintenance via a \$72,000 depreciation reduction derived from application of 20% functional depreciation.⁶⁵ The County's evidence also indicates, however, that an upward 4% economic obsolescence adjustment was applied to the Subject Property for tax year 2012, thereby indicating that the fallout from economic crisis had reversed.⁶⁶

III. VALUATION ANALYSIS

A. CURRENT MARKET CONDITIONS REQUIREMENT

1. General guidance regarding consideration of the economic crisis by the County in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.⁶⁷ For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as vacancy factors and distressed sale rates as a part of developing and maintaining market area databases.⁶⁸ 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,

⁶⁵ See, E7:3.

⁶⁶ E7:3. The majority indicates that the County Assessor had sales to support this 4% increase for economic depreciation. However, the majority also states that the County's expert testified that there was only one sale available for review within the normal two-year look-back window (i.e., July 1, 2009 through June 30, 2011), which makes sense given the credit crisis in the aftermath of the 2008 economic crisis. Thus, as noted by the majority, the County relied on older sales going back to July 1, 2008, which pre-dated the time in September 2008 when the general public became aware that the United States was mired in a credit crisis (see *Borgata* casino case timeline herein). Thus, I would find that the County relied on sales outside of the normal two-year look-back that pre-dated the impact of the economic crisis for purposes of its 4% upward adjustment.

⁶⁷ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

⁶⁸ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**⁶⁹

2. 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 2012 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 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.⁷⁰

⁶⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

⁷⁰ *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).

3. 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.⁷¹

4. 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.⁷²

B. THE COUNTY’S COST APPROACH VALUATION

1. The County Board submitted its Assessment Report received in evidence at Exhibit 7, which indicate that its valuations for tax year 2012 is based on the cost approach as discussed below.
2. *Mass Appraisal of Real Property*, which is published by the International Association of Assessing Officers, states that mass appraisal models should generate valuations that are “understandable and explainable,” and assessors “should understand the components of the model and how it works.”⁷³

⁷¹ *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).

⁷² *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

⁷³ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, p. 207.

3. In light of the “understandable and explainable” standard contained in *Mass Appraisal of Real Property*, the County’s assessment actions regarding the Subject Property are problematic due to the use of the cost approach for valuation purposes.
4. The reliability of the cost approach is limited in the case of older residential properties such as the Subject Property.⁷⁴ Additionally, Charlson’s appraisal states that the cost approach is not reliable in the case of a 30-year-old improved parcel such as the Subject Property that has not been updated, due to difficulty estimating depreciation.⁷⁵
5. In light of the limited reliability of the cost approach for an older parcel such as the Subject Property, together with my concern that the County failed to sufficiently account for current market conditions in the aftermath of the economic crisis due to its 4% upward economic obsolescence adjustment, I would find that the County Board’s reliance on the County Assessor’s cost approach valuation is unreasonable or arbitrary for tax year 2012.

C. VALUATION ANALYSIS CONCLUSION

1. In the case where it is determined that the County Board’s determination is unreasonable or arbitrary, the Commission must review the evidence and adopt the most reasonable estimate of actual value presented.⁷⁶
2. The Subject Property’s 2002 assessed value amounted to \$267,216 and then increased substantially to \$340,700 in 2008 when the elder Mr. Looby passed away. This rapid valuation increase by the County occurred during a period when real estate values were fueled by a variety of factors, including a favorable lending environment. As a consequence of the onset of the economic crisis in 2007 - 2008 and its aftermath, real estate values in tax year 2012 often were less than or equal to pre-crisis levels near the turn of the century. Thus, I would find that \$260,000 is a reasonable valuation and is the best evidence of value for tax year 2012, especially given the fact that the Subject Property (1) has not been updated significantly if at all since 1981; (2) has been vacant since 2008; and (3) is subject to significant deferred maintenance issues.

⁷⁴ *Appraising Residential Properties*, 4th Edition, Appraisal Institute, 2007, at p. 260.

⁷⁵ E21:5.

⁷⁶ See, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002); *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

3. I also note that Ms. Boyles' CMA references the sale of Lot 4 for \$285,000 in June of 2011.⁷⁷ The residence situated on Lot 4 is rated Average in terms of condition versus Fair for Subject Property.⁷⁸ According to the map found at Exhibit 6, Lot 4 is across lake from Subject Property, indicating similarity in terms of location and lake view. Thus, a \$260,000 valuation of the Subject Property, which has been vacant since 2008 and which has significant deferred maintenance issues, seems reasonable for tax year 2012.

IV. CONCLUSION

Based on the above analysis, I would find that the Taxpayer has rebutted the presumption that the County Board faithfully performed its duties with sufficient and competent evidence on which to base its decision for tax year 2012, and that the Taxpayer has shown by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable. I would further find that the opinion of value offered by the Taxpayer's appraiser and the County Board's Referee constitutes the best evidence of value for the Subject Property for tax year 2012. Therefore, I would find that the actual value of the Subject Property for tax year 2012 is \$260,000, and that the decision of the County Board should be vacated and reversed.

Thomas D. Freimuth, Commissioner

⁷⁷ See, E23:8; E15 (Property Record File for Lot 4).

⁷⁸ E15:2.