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

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| Bel Fury Investments Group, LLC,<br>Appellant,<br><br>v.<br><br>Douglas County Board of Equalization,<br>Appellee. | Case No: 12R 934<br><br>**Decision Reversing**<br>**County Board of Equalization** |

## GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential rental parcel improved with a 1,032 square foot home located at 1317 South 12th 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 $63,700 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 $39,900 valuation.
4. The County Board determined that the assessed value of the Subject Property was $63,700 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 $28,510 on January 25, 2010.
10. The Property Record Profile for the Subject Property indicates that the County Board's $63,700 determination for tax year 2012 includes $3,900 for land and $59,800 for the improvement component.
11. The County's Assessment Report indicates that the County Board's $59,800 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 | 3900 | 59800 | 63700 | County Board |
| 2012 | 3/9/2012 | 3900 | 59800 | 63700 | Reappraisal by County Assessor |
| 2011 | 3/13/2011 | 3900 | 63700 | 67600 | Inspection Review |
| 2010 | 8/11/2010 | 3900 | 64100 | 68000 | County Board |
| 2009 | 3/9/2009 | 3900 | 77400 | 81300 | Inspection Review |
| 2007 | 3/13/2007 | 3900 | 66500 | 70400 | Reappraisal by County Assessor |
| 2004 | 3/18/2004 | 3900 | 50200 | 54100 | Reappraisal by County Assessor |
| 2001 | 3/16/2001 | 3900 | 32200 | 36100 | MVU - Acronym Unknown |
| 1999 | 5/21/1999 | 3900 | 28900 | 32800 | State Agency Order |
| 1998 | 3/4/1998 | 3600 | 26800 | 30400 | REV - Acronym Unknown |

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 |
|---|---|---|---|---|---|---|
| 1/25/2010 | $28,510 | Trust Deed | 2010016179 | 2010 | 16179 | MCCUBBIN Garry TRUSTEE |
| 12/20/2004 | $71,000 | Warranty Deed | 2004164477 | 2004 | 164477 | TERRY KALUZ ETAL |
| 7/15/2004 | $30,000 | Warranty Deed | 2004096033 | 2004 | 96033 | DEUTSCHE BANK TRUST CO |
| 2/20/2004 | $62,385 | Trust Deed | 2004028328 | 2004 | 28328 | T J YOUNG SUCC TRUSTEE |
| 12/10/1999 | $49,800 | Deed | 2139693 | 2139 | 693 | |
| 5/13/1997 | $34,500 | Deed | 2065352 | 2065 | 352 | |
| 3/10/1995 | $22,000 | Deed | 2002091 | 2002 | 91 | |

14. The Property Record Profile and the Market Calculation Detail document indicate that the Subject Property is located in Neighborhood 24 and Subdivision 21040. The Property Record Profile indicates that the Subject Property is included on County map number 24-0117.
15. The Property Record Profile indicates that the Subject Property is a 1,032 square foot residence built in 1890, with an effective age of 122 years. The Property Record Profile rates the Subject Property's quality and condition as "Good."
16. The Market Calculation Detail document states that $8,330 ($8,500 x .98 Neighborhood adjustment) in Subject Property improvement value is attributable to the County's "Good" condition rating. The Taxpayer, however, stated that the condition should be lowered to "Average," and Mr. Corcoran of the County stated that he lowered the condition to "Average" based on his recent inspection. Based on the documents and

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

statements submitted at the hearing before the Commission, Mr. Corcoran of the County Assessor's Office offered a revised opinion of value for the improvement component in the amount of $51,470 ($59,800 improvement value less $8,330 condition adjustment) for tax year 2012.

17. The Assessment Report contains County Board "Referee" notes that reference a February 2010 fee appraisal of the Subject Property prepared for refinancing purposes (as indicated above, the Property Record Profile indicates that the Taxpayer purchased the Subject Property for $28,510 in January 2010). This fee appraisal, which was not submitted at the hearing before the Commission, valued the Subject Property at $68,000 according to the Referee notes.
18. 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 $39,900 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 one block of the Subject Property). The Taxpayer did not submit a fee appraisal of the Subject Property or other parcels at the hearing.
19. 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 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.
20. 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.
21. The County's Assessment Report includes a "Sales Comparables" chart that sets forth three sales of Good condition homes in the Subject Property's market area, including two sales in 2011 and one in 2010, each of which is within the acceptable two-year look-back period preceding the 2012 assessment date. These transactions generated sales prices amounting to $70,000, $77,000 and $58,000.
22. The Commission notes that the County's Assessment Report states that the sales included in the Sales Comparables chart are "outside of the neighborhood search area for similar properties."
23. The Taxpayer asserted that all of the County's comparables were superior in terms of condition as compared to the Subject Property. He also asserted that the County's comparables were problematic because they are not in close proximity to the Subject Property (10 to 25 block distance).

## STANDARD OF REVIEW

24. 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]
25. 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]
26. 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]
27. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[7]

## GENERAL VALUATION LAW

28. 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]
29. "Actual value, market value, and fair market value mean exactly the same thing."[9]
30. 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]
31. All real property in Nebraska subject to taxation shall be assessed as of January 1.[11]
32. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[12]
33. Nebraska Statutes section 77-112 defines actual value as follows:

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[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*.
[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).

> 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

34. The Taxpayer averaged the per square foot assessment value of three parcels in close proximity to the Subject Property for purposes of arriving at its $39,900 opinion of value. The Taxpayer's approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
35. 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]
36. The Commission also notes that the use of assessed values in general is not a commonly accepted appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.
37. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's use of assessed values of properties near the Subject Property is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's $39,900 opinion of value to the extent it relies on the use of averaged assessed values of comparables.
38. 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

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[13] Neb. Rev. Stat. § 77-112 (Reissue 2009).
[14] *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 308.

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]

39. 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]
40. 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.
41. Guidance for purposes of applying the sales comparison approach and other valuation methods is widely 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 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.
42. 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.*
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## DISTRESSED SALES AS INDICATOR OF VALUE ANALYSIS

43. 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.[18]
44. 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

[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).
[18] The Commission notes that the three parcels submitted for consideration by the Taxpayer were not subject to recent sale transactions.

market area exclude foreclosure sales and other distressed sales that are deemed not arm's-length.

45. *The Dictionary of Real Estate Appraisal* defines an arm's-length transaction as follows: "A transaction between unrelated parties under no duress."[19]
46. 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."[20]
47. 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.[21]

48. 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."[22]
49. 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.[23] 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.[24] 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. **<u>The goal is for mass appraisal equations and schedules to reflect current market conditions.</u>**[25]

50. 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

[19] *The Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute, 2002, at p. 18.
[20] *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 304.
[21] Neb. Rev. Stat. § 77-112 (Reissue 2009).
[22] *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
[23] *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.
[24] *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.
[25] *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

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. . . .
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> 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.[26]

51. 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'') **<u>and those same properties plummeted in value after 2006 [and] continuing to the present</u>**. 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

[26] *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).

> 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.[27]

52. 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.[28]
53. 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.[29] For instance, in 2012 the Oregon Tax Court considered whether "foreclosures and short sales characterize the market for the subject property" in *Greene v. Benton County Assessor.*[30] 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.[31]

54. 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*

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[27] S*ewickley, 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).
[28] *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).
[29] *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).
[30] *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).
[31] *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 3 (Oregon Tax Court 2012).

> (*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).[32]

55. 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.[33] 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.'[34]

56. 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

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[32] *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).
[33] *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).
[34] *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011).

an arm's-length with adequate exposure and contained no unusual financing terms or elements that couldn't be adjusted out.'[35]

57. 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.'[36]

58. 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.[37]

59. 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:

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[35] *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 9 (Oregon Tax Court 2012). [Emphasis in original Memorandum.]
[36] *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at pgs. 8-9 (Oregon Tax Court 2012). [Emphasis in original Letter.]
[37] 2012 Statewide Equalization Exhibit 107, p. 31.

> 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.[38]

60. The Taxpayer did not 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.
61. 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

62. "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."[39] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[40] 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.[41]
63. 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.[42]
64. 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.[43] 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.[44]
65. The constitutional requirement of uniformity in taxation extends to both rate and valuation.[45] 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

[38] 2011 Statewide Equalization Exhibit 107, p. 117; 2012 Statewide Equalization Exhibit 107, p. 32.
[39] *Neb. Const.*, Art. VIII, §1.
[40] *MAPCO Ammonia Pipeline v. State Bd. of Equal*., 238 Neb. 565, 471 N.W.2d 734 (1991).
[41] *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).
[42] *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
[43] *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[44] *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).
[45] *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic]."[46] "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."[47]

66. "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."[48]

## EQUALIZATION ANALYSIS

67. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of three comparables referenced previously. In support of this assertion, the Taxpayer submitted documentation and photos analyzing the assessment history of the three parcels. 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 one block of the Subject Property, which is located at 1317 South 12th Street).
68. According to the respective screen-shots from the Douglas County Assessor's website, the parcels submitted for consideration are located at 1231 South 13th Street (778 sq. ft. 1.5-Story; $14,000 "Valid" sale in 1994 and $22,000 "Valid" sale in 1993; 2012 assessment: $26,100); 1318 South 12th Street (947 sq. ft. Ranch; no sale information; 2012 assessment: $40,500); and 1320 South 12th Street (940 sq. ft. Ranch; $41,500 "Valid" sale in August 2002 and $40,000 sale of unknown validity in June 2002; 2012 assessment: $33,800). All of the parcels are rated Fair in terms of condition, which is one level lower than the Average condition rating assigned to the 1,032 square foot Subject Property at the hearing.
69. 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.
70. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;[49] 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.[50]
71. The Commission finds that the properties submitted by the Taxpayer are not similarly situated or comparable for equalization analysis purposes in substantial part because all are rated Fair in terms of condition as compared to the Subject Property's Average rating. 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 less than 100% for tax

[46] *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[47] *Id.* at 673, 94 N.W.2d at 50.
[48] *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).
[49] See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).
[50] See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

year 2012. 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.

**THE RULE OF 72**

73. Under the "Rule of 72," dividing 72 by a fixed compounded rate of return calculates the amount of time necessary for an asset to double in value.[51] For example, a $30,400 asset (the 1998 assessed value of the Subject Property – see chart above) that appreciates at a 7.2% compounded annual rate of return will double in value to $60,800 in 10 years.
74. The sales/assessment history charted above indicates that the Subject Property sold for $34,500 in 1997, and that the assessment more than doubled from $32,800 in 1999 to $81,300 in 2009, based on an "Inspection Review" by the County Assessor in March 2009. Thus, the assessed value of the Subject Property grew at a 10.34% annual compounded rate from 1999 to 2009.
75. The Commission notes that the assessed value of the Subject Property has increased significantly in excess of historical residential real estate appreciation trends through and beyond the economic crisis, including the County Board's $63,700 determination for tax year 2012. The Commission also notes, however, that the evidence is not clear regarding the condition of the Subject Property in the 1990s, and that the rapid increase in the assessed valuation could stem from improvements or other factors since that time. That said, based on the timeline contained in the New Jersey Tax Court's opinion above indicating that the vast majority of the general public became aware of the national economic crisis by September 2008, the substantial assessed value increase to $81,300 in 2009 -- based on an "Inspection Review" by the County Assessor in March 2009 that presumably relied on sales in the two-year look-back period that pre-dated the onset of the crisis -- is problematic.
76. The Commission further notes that the sales/assessment history of the Subject Property charted above is quite possibly indicative of the valuation/equalization problems associated with subprime lending, which contributed in substantial part to the economic crisis and which the Taxpayer indicated is a significant adverse factor in terms of valuation/equalization in the Subject Property's market area.[52] The Subject Property's sales/assessment history and the sales/assessment history of the Taxpayer's three nearby parcels summarized above in the "Equalization Analysis" section are also quite possibly illustrative of the valuation/equalization problems associated with the combination of subprime lending and investor "house-flipping."

[51] See, *The Dictionary of Real Estate Appraisal*, 4th Edition, Appraisal Institute, 2002, at p. 253.

[52] The Taxpayer indicated that federal government homeownership policy stimulated the aggressive marketing of subprime loans to low-income recipients and others in market areas similar to the area where the Subject Property is located. The Taxpayer further indicated that the combination of aggressive subprime lending and historically low interest rates prior to the economic crisis fueled home purchases and refinancing appraisals that often significantly exceeded actual value. Thus, the Taxpayer asserted that actual real estate values in the aftermath of the economic crisis are often significantly less than or equal to values in the preceding decade.

## CONCLUSION

77. Based on the County's revised opinion of value involving the Subject Property's Average condition rating, the Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
78. Based on this revised opinion of value, the Taxpayer has 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 vacated and reversed.

## 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 vacated and reversed.
2. That the taxable value of the Subject Property for tax year 2012:

| | |
|---|---|
| Land | $ 3,900 |
| Improvements | $ 51,470 |
| Total | $ 55,370 |

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 February 28, 2014.

Signed and Sealed: February 28, 2014.

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Thomas D. Freimuth, Commissioner