

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kathleen M. Tracy,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 200 & 13R 134

Decision Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1.5-story, 3,378 square foot residence located at 667 Parkwood Lane, Omaha, NE, Douglas County, Nebraska.
2. The Douglas County Assessor assessed the Subject Property at \$388,500 for tax years 2012 and 2013.
3. Kathleen M. Tracy (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 an assessment of \$350,000 for tax years 2012 and 2013.
4. The County Board determined that the assessed value of the Subject Property was \$388,500 for tax years 2012 and 2013.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”) for tax years 2012 and 2013.
6. A Single Commissioner hearing was held on August 14, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Bldg., 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Kathleen and Don Tracy were present at the hearing for the Taxpayer.
8. Larry Thomsen, an assessor for the Douglas County Assessor’s Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File (herein referred to as “PRF”) contained in the respective tax year 2012 and 2013 Assessment Reports submitted by the County for the Subject Property indicate that the County Board’s \$388,500 determination for those tax years includes \$34,300 for land and \$354,200 for the improvement component. The PRFs indicate that the Subject Property’s 1.5-story residence was built in 1955 and remodeled in 1993, and that the County Assessor rates the improvement as “Good” in terms of quality and condition.
10. The 2013 Assessment Report contains the following property valuation history at page 16:

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2013	8/7/2013	\$34,300	\$354,200	\$388,500	County Board
2012	8/7/2012	\$34,300	\$354,200	\$388,500	County Board
2006	7/23/2006	\$34,300	\$354,200	\$388,500	County Board
2006	3/14/2006	\$34,300	\$412,200	\$446,500	County Assessor Reappraisal
2002	3/24/2002	\$34,300	\$229,100	\$263,400	County Assessor Inspection Review
2001	7/5/2001	\$20,000	\$229,100	\$249,100	County Board
2001	3/16/2001	\$20,000	\$229,100	\$249,100	Building Permit
2000	3/12/2000	\$20,000	\$200,600	\$220,600	MVU (Acronym Unknown)
1999	5/21/1999	\$20,000	\$194,200	\$214,200	State Board of Equalization (TERC)
1999	3/9/1999	\$18,500	\$179,800	\$198,300	PRA (Acronym Unknown)

11. The Assessment Reports indicate that the County Assessor’s office inspected the basement of the Subject Property in March of 2013, which resulted in the following adjustments for tax years 2012 and 2013: (1) a reduction in the total square footage of the basement; (2) a reduction in the amount of finished basement; (3) and an increase in the quality of the existing finish in the basement.¹ These adjustments reduced the value attributable to the basement from \$54,415.20 to \$51,010.40, and they contributed to a reduction of the total model value of the Subject Property from \$422,090 to \$417,935.
12. The Assessment Reports indicate that the County Assessor’s \$422,090 (pre-inspection) and \$417,935 (post-inspection) model values for tax years 2012 and 2013 are based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis.² Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.³ The Assessment Reports each contain documents entitled “Market Calculation Before Inspection” and “Market Calculation After Inspection” that set forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement component.⁴
13. As indicated in the valuation history chart above, the County Board’s \$388,500 determination for tax years 2012 and 2013 values the Subject Property at 92% of the County Assessor’s \$422,090 pre-inspection model value and 93% of the post-inspection model value.
14. Don Tracy, who resides at the Subject Property, and who is the husband of Kathleen Tracy, the Taxpayer, stated that he is a retired Certified Public Accountant and a non-practicing attorney. He also stated that he practiced as a Certified Public Account for 31 years with the accounting firm currently doing business under the name Deloitte, and that he retired in 2009. Mr. Tracy further stated that his main area of expertise is federal taxation.
15. The Taxpayer asserted as follows with respect to tax years 2012 and 2013: (1) the Subject Property is overvalued, in part because the County Board’s decisions for tax years 2012 and 2013 are based on approximately 92-93% of the County Assessor’s

¹ See, 2012 & 2013 Assessment Reports pgs. 11, 14 – 15 (Account Notes and Market Calculation documents pre & post-inspection).

² Assessment Reports, pgs. 9, 14 – 15.

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

⁴ Assessment Reports pgs. 14 – 15 (Market Calculation documents pre & post-inspection).

model values that place unreasonable or arbitrary reliance on sparse \$400,000-plus sales of non-comparable properties in the Dillons Fairacres Addition subdivision (herein referred to as the “DFA”) where the Subject Property is located; (2) the Subject Property’s assessed value is not equalized with comparable properties; and (3) the County Board failed to recognize the effect of the County Assessor’s redetermination of the square footage of the basement of the Subject Property.⁵

16. The Taxpayer provided PRFs for dozens of properties in the DFA subdivision, both recently sold and unsold, sales and assessment information for the DFA subdivision, and analysis of the impact of a change in finished basement square footage including regression analysis.
17. The Taxpayer derived an opinion of value in the amount of \$350,000 for the Subject Property by multiplying the 3,378 square foot gross living area by \$103.31 per square foot.⁶ In support of this \$103.31 per square foot multiplier, the Taxpayer referenced the \$102.02 average assessed per square foot values of all six 1.5-story properties in the Subject Property’s DFA subdivision and the \$99.40 average assessed per square foot values of four alleged 1.5-story comparable properties in DFA (the Commission notes that the County’s representative stated that three of these four properties were comparable to the Subject Property, and that the average assessed per square foot value of these three properties is \$95 for tax years 2012 and 2013 vs. the Subject Property’s \$115 per square foot assessment for those years).⁷
18. In further support of this \$350,000 opinion of value, the Taxpayer presented the following information, together with pertinent PRFs: (1) no 1.5-story properties in the Subject Property’s subdivision sold for more than \$345,000 over a 22-year period from 1991 to 2013; (2) only seven of the 281 sales in the Subject Property’s subdivision during the period 1991 to 2013 exceeded \$400,000; (3) these seven sales involved only four properties, all of which are not comparable to the Subject Property in part because they did not have 1.5-story improvement components; (4) of these seven sales in excess of \$400,000, only two occurred after the onset of the 2008 economic crisis, and these transactions involved sales of parcels that are not comparable to the Subject Property (Addy parcel #93198000 & Thalken parcel #931820000); (5) of these seven sales, three involved the same property between 2001 and 2006 (Thalken, which sold for \$411,000 in January 2001, \$463,000 in October 2005, and \$422,000 in March 2006), and the other two sales that preceded the 2008 economic crisis occurred in 2006 and 2007.⁸
19. In further support of this \$350,000 opinion of value, the Taxpayer presented the following information, together with pertinent PRFs: (1) the 39 properties that sold in the Subject Property’s DFA subdivision from 2009 through 2013 were assessed on average at 91.3% of sale price following the transaction; (2) the Thalken parcel, which is one of only two sales in excess of \$400,000 in the Subject Property’s DFA subdivision after the

⁵ See, Taxpayer’s Appeal Submissions in Case File.

⁶ See, Taxpayer’s packet of information, pg. 38.

⁷ See, Taxpayer’s packet of information, pg. 38 (see page 37 for derivation of \$99.40 average and Exhibit O for derivation of \$102.02 average).

⁸ See, Taxpayer’s packet of information, pgs. 11 – 15, 32; Exhibit B (sales/assessment analysis of all 39 DFA properties that sold from 2009 to 2013, categorizing these sales as follows: (1) \$400,000+: 2 sales; (2) \$300,000 – 399,000: 5 sales; (3) \$200,000 - \$299,000: 21 sales; (4) \$100,000 - \$199,000: 11 sales; and (5) \$0 - \$99,000: 0 sales); and Exhibit E (1991-2013 sales/assessment analysis of all of the approximate 250 DFA properties, whether sold or not during the period 1991 to 2013; the 281 total sales from 1991 to 2013 in the DFA subdivision are categorized as follows: (1) \$400,000+: 7 sales; (2) \$300,000 – 399,000: 27 sales; (3) \$200,000 - \$299,000: 89 sales; (4) \$100,000 - \$199,000: 141 sales; and (5) \$0 - \$99,000: 17 sales).

onset of the 2008 economic crisis, was assessed at approximately 92% of the 2005 (\$463,000) and 2010 (\$465,000) sale prices for tax years 2006 - 2013.⁹

20. The Assessment Reports submitted by the County include the PRFs for the Subject Property and the County Assessor's alleged comparable sale properties.
21. The 2012 Assessment Report states as follows: "Due to a lack of 1 1/2 story sales, comps chosen were from outside the area of the subject and an alternative style was also used[.]" Additionally, the County's representative stated that the County's alleged sales comparable properties outside of the Subject Property's subdivision were not used in the County Assessor's model based on multiple regression analysis for tax years 2012 and 2013.
22. As discussed further below in the analysis section, the Taxpayer asserted that the County's alleged comparable sale properties are not substantially similar or comparable to the Subject Property.
23. The Taxpayer stated that the two alleged comparable properties used by the County Assessor in its tax year 2012 Assessment Report other than the Addy parcel are not located in the DFA subdivision. The Taxpayer also stated that at least two of the three alleged comparable properties used by the County Assessor for tax year 2013 are located in the Fairacres subdivision, which is an area west of the DFA subdivision that is significantly higher-end.

STANDARD OF REVIEW

24. The Commission's review of the determination of the County Board of Equalization is de novo.¹⁰ "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."¹¹
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."¹² 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."¹³
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.¹⁴
27. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁵

⁹ See, Taxpayer's packet of information, pgs. 11 – 15, 32; Exhibit B, Exhibit C.

¹⁰ 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).

¹¹ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

¹² *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹³ *Id.*

¹⁴ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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.¹⁶
29. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁷
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.¹⁸
31. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹
32. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰
33. 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.²¹

VALUATION ANALYSIS – THE COUNTY BOARD’S DECISIONS

34. With respect to valuation, in addition to the \$350,000 opinion of value, the Taxpayer asserts that the County Board failed to sufficiently consider the following for tax years 2012 and 2013: (1) lack of sales in excess of \$400,000 in the Subject Property’s subdivision during the period 1991 to 2013 (seven total sales involving only four parcels) and during the period 2009 – 2013 in the aftermath of the 2007 - 2008 economic crisis (two total sales); and (2) no sales of 1.5-story properties in excess of \$345,000 over the period 1991 – 2013. In other words, the Taxpayer asserts that the Subject Property is overvalued in part because the County Board’s decisions for tax years 2012 and 2013 are based on 92% - 93% of the County Assessor’s model values that place unreasonable or arbitrary reliance on sparse \$400,000-plus sales of non-comparable properties in the DFA subdivision.
35. The Assessment Reports and the Taxpayer’s analysis indicate that the County Board’s \$388,500 determination for tax years 2012 and 2013 is approximately 92% of the County

¹⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁶ 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).

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ Neb. Rev. Stat. § 77-112 (Reissue 2009).

Assessor's pre-inspection sales comparison approach mass appraisal model value (\$388,500/\$422,090 = 92.04%) and approximately 93% of the post-inspection model value (\$388,500/\$417,935 = 92.95%).²²

36. 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, stating as follows in terms of models used in the residential context:

Model calibration **is the process of adjusting** mass appraisal formulas, tables, and schedules **to the current market**. During model calibration, the relationships are quantified; that is, the coefficient (as an amount or percentage adjustment) for each independent variable is determined, for example, dollars per square foot of living area. The primary tool for calibration is multiple regression analysis (MRA). . . .

Although the structure of a mass appraisal model may be valid for many years, **the model is usually recalibrated 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.**²³

37. 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 in 2006):

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. . . .

²² See, 2012 & 2013 Assessment Reports, pgs. 14 – 16; Taxpayer's packet of information, pgs. 11 – 15, 32. As indicated previously, the County Board reduced the County Assessor's \$422,090 (revised to \$417,935 post-inspection) Subject Property model value in 2012 to \$388,500 (\$388,500/\$422,090 = 92.04%; \$388,500/\$417,935 = 92.95%) in an apparent continuing effort to equalize the parcel with the 2006 - 2013 assessment of the Thalken property (\$426,300 2006 - 2013 assessment ÷ \$465,000 2010 sale = 92%). Additionally, Exhibit B of the Taxpayer's packet of information, which sets forth a sales/assessment analysis of all 39 DFA properties that sold from 2009 to 2013, indicates that these properties were assessed on average at 91.3% of sale price (93.9% prior to sale).

²³ *Property Assessment Valuation, 3rd Ed.*, International Association of Assessing Officers, 2010, pgs. 415, 417-18 (emphasis added).

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.²⁴

38. 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.²⁵

39. 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.²⁶
40. 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. Ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles

²⁴ *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).

²⁵ *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).

²⁶ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result.

41. With respect to consideration of current market conditions within the meaning of the above authorities, the Assessment Reports provide limited information regarding the County Assessor’s model relied upon by the County Board for purposes of its \$388,500 (92% of the County Assessor’s pre-inspection model, and 93% post-inspection) determination for tax years 2012 and 2013.²⁷ In this regard, the Assessment Reports contain a brief half-page explanation stating that the County Assessor’s sales comparison approach mass appraisal model is derived from the use of multiple regression analysis.²⁸ The Assessment Reports also contain pre-inspection and post-inspection one-page Market Calculation Detail documents that set forth the value derived from multiple regression analysis assigned to 11 model characteristics.²⁹
42. According to *Property Assessment Valuation*, which is published by the International Association of Assessing Officers, multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.³⁰ Further, *Mass Appraisal of Real Property*, which is also published by the International Association of Assessing Officers, states as follows regarding the number of sales necessary to sufficiently calibrate a sales comparison approach model that includes 11 characteristics (i.e., independent variables) like the County’s:

Although adding variables tends to improve accuracy, models should also be simple and *explainable*. In addition, increasing the number of variables increases proportionately the number of sales required to calibrate the model. As a general rule, the number of sales should be at least five times (fifteen times is desirable) the number of independent variables. For example, a model with twenty variables requires at least 100 sales (preferably 300 or more).³¹

43. According to this guidance, the County Assessor’s model that is comprised of 11 Subject Property characteristics should be based on 55 to 165 sales. The statements and documents submitted at the hearing, however, indicate that the County’s model could not have met this standard. In this regard, the Taxpayer’s Exhibit B indicates that of the 39 sales in DFA from 2009 – 2013, only two exceeded \$400,000 and the Taxpayer’s \$350,000 opinion of value (Addy and Thalken parcels). Additionally, the County’s own Assessment Report for tax year 2012 contains a notation by the County Assessor which

²⁷ I note that page 4 of the County’s Assessment Reports for tax years 2012 and 2013 indicates that the County Assessor’s model did not adjust for current market conditions **at all**. In this regard, the number “1” next to “NBHD Adj” indicates that the County Assessor’s model did not adjust to a factor below “1” to address current market conditions in the aftermath of the economic crisis.

²⁸ 2012 & 2013 Assessment Reports, pg. 9.

²⁹ 2012 & 2013 Assessment Reports, pgs. 14 - 15.

³⁰ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

³¹ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, p. 127 (emphasis in original); See also, *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964). (“Where a county assessor has not acted on his own information, and where it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous.”).

states as follows: “Due to a lack of 1 1/2 story sales, comps chosen were from outside the area of the subject and an alternative style was also used” (the two-story Addy parcel is the “alternative style” property used by the County, which the Commission concludes is not comparable to the Subject Property as discussed below).³²

44. The Addy parcel, which besides the Thalken property is the only parcel in the Subject Property’s subdivision that sold in excess of \$400,000 after the 2008 economic crisis, sold for \$480,000 in October 2011 and has been assessed at \$487,700 for tax years 2006 – 2013 according to its PRF submitted by both Parties, and Taxpayer Exhibits B and E.³³ As noted previously, this parcel was included among the three alleged comparable sale properties by the County Assessor for tax year 2012. The Addy parcel was not, however, included among the three alleged comparable sale properties by the County Assessor for tax year 2013, even though its October 2011 sale date is within the two-year look-back period for that tax year.
45. The Taxpayer asserted that the Addy parcel is not comparable to the Subject Property, in part because it is a larger two-story with a three-car garage built in 1984 and its condition is superior (in this regard, the Taxpayer indicated that the property's residence includes an elevator and otherwise contains high-end improvements). The Commission notes that the Addy PRF rates quality as “Very Good” versus the Subject Property's "Good" rating.
46. Based on the Taxpayer’s unrefuted statements regarding the Addy property, the Commission concludes that the County excluded this parcel in its listing of alleged 2013 comparable sale properties because it is not comparable to the Subject Property.
47. A review of the PRFs for the two alleged comparable properties used by the County Assessor in its tax year 2012 Assessment Report other than the Addy parcel indicate that they are not located in the DFA subdivision, and that they are not comparable to the Subject Property.
48. A review of the PRFs for the three alleged comparable properties used by the County Assessor for tax year 2013 indicate that they are not located in the DFA subdivision, and that one is located in the Fairacres subdivision, which is an area west of the DFA subdivision that is significantly higher-end. The County’s representative did not dispute that the Fairacres subdivision is significantly higher-end in comparison to DFA.
49. Based on a review of the respective PRFs, the County’s Assessment Report for tax year 2013 contains alleged comparable sale properties that are outside of the Subject Property’s DFA subdivision and not comparable to the Subject Property.
50. The Commission notes that the County Assessor’s alleged comparable sale properties for tax years 2012 and 2013 do not include the Thalken parcel, which is one of only two properties in the Subject Property’s subdivision that sold in excess of \$400,000 after the 2008 economic crisis (the Addy parcel is the other \$400,000+ sale). The Thalken PRF indicates that it sold for \$465,000 in September 2010, which is within the County Assessor’s two-year look-back period for tax years 2012 and 2013 (July 1, 2010 – June

³² 2012 Assessment Report, pg. 10.

³³ The property valuation history of the Addy parcel found at page 22 of the County’s 2012 Assessment Report indicates that the County Board adopted the County Assessor’s \$487,700 reappraisal value for tax year 2006, thereby substantially increasing the prior \$350,200 assessment in place for tax years 2002 - 2005. The “Market Calculation Detail” document for tax year 2012 found at page 21 of the County’s 2012 Assessment Report, together with Taxpayer Exhibits B & C, indicate that the Addy parcel was assessed at \$487,700 for tax years 2006 – 2013. Similar to the Subject Property as discussed below, the County Assessor conducted its reappraisal of the Subject Property in 2006 based, at least in substantial part in light of the scarcity of sales in excess of \$400,000 from 1991 – 2005 as disclosed by Taxpayer Exhibit E, upon the 2005 sale of the Thalken property for \$463,000.

30, 2012 look-back period for tax year 2013), so the Commission concludes that the County excluded the parcel in its listing of alleged comparable sale properties because it is not comparable to the Subject Property.

51. The County's representative stated that the County's alleged sales comparable properties outside of the Subject Property's DFA subdivision were not used in the County Assessor's model based on multiple regression analysis for tax years 2012 and 2013. Thus, because only two of 39 total sales in DFA exceeded \$350,000 during the period 2009 through 2013 as illustrated by Taxpayer Exhibit B, and even though the Thalken property is not comparable to the Subject Property as indicated by the County's exclusion thereof from its alleged comparable sale properties for tax years 2012 and 2013, the Commission concludes that the County Assessor relied in substantial part on the \$465,000 sale of the parcel in September 2010 to construct its \$422,090 pre-inspection and \$417,935 post-inspection models.
52. The Commission further concludes that the County Board relied on the County Assessor's model values in a continuing effort to equalize the Subject Property with the 2006 – 2013 assessment of the Thalken property. In this regard, the County Board's \$388,500 determination for tax years 2012 and 2013 amounts to 92% of the County Assessor's \$422,090 (revised to \$417,935 post-inspection) Subject Property model value in tax years 2012 and 2013 ($\$388,500/\$422,090 = 92\%$; $\$388,500/\$417,935 = 93\%$), which is substantially similar to the 2006 – 2013 assessment of the Thalken property ($\$426,300$ 2006-2013 assessment \div $\$465,000$ 2010 sale = 92%).
53. The Taxpayer's statements and information and the County's own evidence analyzed above indicate that the County Assessor's models comprised of 11 Subject Property characteristics were constructed in a manner that could not have included sufficient DFA subdivision sales to meet the 55 to 165 sales standard contained in the *Mass Appraisal of Real Property* language referenced previously.
54. The Taxpayer's statements and information and the County's own evidence also indicate that the County's models place unreasonable reliance on sparse sales of non-comparable properties in DFA in excess of the Taxpayer's \$350,000 opinion of value, to the exclusion of the vast majority (95%) of sales less than or equal to \$350,000 in the periods 1991 – 2013 and 2009 – 2013, and to the exclusion of the history of sales and assessments 1.5-story parcels like the Subject Property.
55. The Commission notes that Taxpayer Exhibit B indicates that only two sales exceeded \$400,000 (Addy and Thalken) after the 2008 economic crisis in the DFA subdivision, and that no sales between 351,000 and 399,000 occurred after 2008 (parcel #0932260000 sold for \$350,000 on May 27, 2011), so 37 of 39 total sales (95%) in DFA from 2009 to 2013 were either less than or equal to the Taxpayer's \$350,000 opinion of value. Additionally, Taxpayer Exhibit E indicates that 268 of 281 total sales (95%) properties in DFA from 1991 to 2013 were either less than or equal to \$350,000 (only 10 of the approximate 250 total DFA properties – 4% -- were involved in the 13 sales exceeding \$350,000 from 1991 to 2013 as discussed further immediately below).
56. The Commission also notes that Taxpayer Exhibit E's analysis of the 281 sales in DFA from 1991 to 2013 indicates that besides the four parcels that sold in excess of \$400,000 during that period, only six other properties sold in excess of the Taxpayer's \$350,000 opinion of value, all of which occurred prior to the 2008 economic crisis and involved either a 2-story or Ranch improvement unlike the Subject Property's 1.5-story residence

(\$399,000 in 2003; \$390,000 in May 2008 prior to the September 2008 collapse of Lehman Brothers when the economic crisis became widely known; \$385,000 in 2007; \$375,000 in 2007; and two \$357,000 sales in 2006).

57. The Commission further notes that Taxpayer Exhibit E's analysis of all of the approximately 250 properties in DFA, whether sold or unsold in the period 1991 – 2013, indicates that six parcels are improved with a 1.5-story residence like the Subject Property. Exhibit E indicates that four of these parcels sold in the 1991 – 2013 period, generating the following sale prices: (1) \$230,000 in 2011; (2) \$345,000 in 2003; (3) \$266,000 in 2002; and (4) \$260,000 in 2001.
58. Based on a review of the dozens of PRFs submitted by the Taxpayer for the DFA subdivision, together with the other documents and statements submitted at the hearing, the Commission concludes as follows: (1) the County Assessor conducted its reappraisal of the Subject Property in 2006 based, at least in substantial part, upon the 2005 sale of the Thalken property for \$463,000; (2) the Taxpayer's statements and documents show that the County Assessor placed unreasonable reliance on the Thalken sale and the sparse number of other sales in excess of \$400,000 and \$350,000 for purposes of constructing its model in 2006, to the exclusion of the vast majority of sales in DFA below \$350,000, and to the exclusion of the history of sales of 1.5-story parcels like the Subject Property; and (3) the County Board reduced the County Assessor's \$446,500 Subject Property reappraisal value in 2006 to \$388,500 ($\$388,500/\$446,500 = 87\%$) in an effort, at least in substantial part, to equalize the parcel with the 2006 assessment of the Thalken property ($\$426,300$ 2006 assessment \div $\$463,000$ 2005 sale = 92%).
59. The Commission notes that the Thalken property sold for \$465,000 in 2010, and that its assessed value has remained \$426,300 for tax years 2006 – 2013. Based on a review of the dozens of PRFs submitted by the Taxpayer for the DFA subdivision, together with the other documents and statements submitted at the hearing, the Commission concludes as follows: (1) the County Assessor constructed its models applied to the Subject Property in tax years 2012 and 2013 based, at least in substantial part, upon the 2010 sale of the Thalken property for \$465,000; (2) the Taxpayer's statements and documents show that the County Assessor placed unreasonable reliance on the Thalken sale and the sparse number of other sales in excess of \$400,000 and \$350,000 for purposes of constructing its models in 2006, 2012, and 2013, to the exclusion of the vast majority (95%) of sales in DFA less than or equal to \$350,000 (2009 – 2013: 37/39 total sales = 95%; 1991 – 2013: 268/281 total sales = 95%), and to the exclusion of the history of sales of 1.5-story parcels like the Subject Property; and (3) the County Board, in reliance on the County Assessor's 2012 and 2013 model values, reduced the County Assessor's \$422,090 (revised to \$417,935 post-inspection) Subject Property model value in tax years 2012 and 2013 to \$388,500 ($\$388,500/\$422,090 = 92\%$; $\$388,500/\$417,935 = 93\%$) in a continuing effort to equalize the parcel with the 2006 – 2013 assessment of the Thalken property ($\$426,300$ 2006-2013 assessment \div $\$465,000$ 2010 sale = 92%).
60. The Subject Property's PRF indicates that its assessed value has increased from \$263,400 in tax years 2002 – 2005 to \$388,500 in tax years 2006 – 2013, based on the County Assessor's models ranging from \$417,935 to \$446,500 during that period. This dramatic increase and the existence of sparse sales of non-comparable properties in excess of \$350,000 during the period 1991 to 2013 (only two sales over \$350,000 after the 2008 economic crisis, each over \$400,000) raise concern regarding the validity of the County's

mass appraisal model for purposes of determining the actual value of the Subject Property for tax years 2006 through 2013. The County Board's failure to adjust its \$388,500 determination to account for the County Assessor's basement inspection in March of 2013 adds to this concern.

61. The County Board's \$388,500 determination for tax years 2012 and 2013 is also problematic in part because no evidence in the form of testimony or documentation explains -- or even refutes the Taxpayer's assertions -- whether the existence of only two of 39 total DFA sales in excess of \$350,000 during the period 2009 - 2013 or the lack of 1.5-story sales in excess of \$345,000 during the period 1991 - 2013 compromised the validity of the County Assessor's \$417,935 post-inspection model in tax years 2012 and 2013, especially for purposes of assessing "current market conditions" in the aftermath of the 2008 economic crisis.
62. Based on the documents and statements submitted at the hearing and for the reasons noted above and in the Equalization Analysis section below, the Commission finds sufficient evidence that the County Board's \$388,500 determination for tax years 2012 and 2013 that is based on 92% of the County Assessor's \$422,090 pre-inspection model is arbitrary or unreasonable.³⁴
63. The Taxpayer's submissions, together with the property valuation history chart above, are convincing in terms of the County Board's reliance on the County Assessor's models to assess the Subject Property for tax years 2006 through 2013. The Commission notes, however, that the documentation and statements submitted at the hearing by the County do not provide specificity regarding the County Board's reduction of the County Assessor's \$422,090 pre-inspection model value to \$388,500 for tax years 2012 and 2013.
64. Under Nebraska Statutes section 77-1502(5), the County Clerk and the County Assessor are required to maintain a record regarding the basis of the County Board's property valuation protest decisions.³⁵ In the case where this record is not provided to the Taxpayer by the County Clerk or County Assessor upon request, the Taxpayer can use the formal discovery process under the Commission's rules to request and obtain such documentation. In order to obtain information regarding the basis of County Board and/or County Assessor valuation decisions, the Taxpayer can also use subpoenas to require appearance of County Board members, County Board Referees, and/or County Assessor Office employees at a hearing before the Commission.

VALUATION ANALYSIS – TAXPAYER'S \$350,000 OPINION OF VALUE

65. The Taxpayer's \$350,000 opinion of value based on the use of average assessed values of 1.5-story homes in the Subject Property's subdivision combined with the average assessed values of four alleged comparable properties can best be described as an attempted sales comparison approach.³⁶
66. An opinion of value using the sales comparison approach is developed by analyzing

³⁴ Assessed value, as determined by the County Board for tax years 2012 and 2013, 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 at the 2012 and 2013 protest proceedings.

³⁵ Neb. Rev. Stat. § 77-1502(5) (2012 Cum. Supp.).

³⁶ The Taxpayer argued other market values for the Subject Property, but those values were simply based on percentage adjustments to the Subject Property's assessed value as determined by the County Board.

closed sales, listings, or pending sales of properties that are similar to the subject property.³⁷ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.³⁸ This process requires an analysis of sales prices, not assessed values.³⁹ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.⁴⁰

67. The Taxpayer's opinion of value was determined in part by averaging the assessed values of other properties and then applying a value based the averaged per square foot value to the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.⁴¹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal technique would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
68. The Commission notes that case law and appraisal literature contains caution regarding the use of averaging as a part of the sales comparison approach. In this regard, the weight of authority is that assessed value is not in and of itself direct evidence of actual value.⁴² "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."⁴³
69. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the assessed and/or sales values of the parcels submitted for consideration meet the requirements of the sales comparison approach.
70. Based on a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's \$350,000 opinion of value does not by itself constitute clear and convincing evidence that the County Board's \$388,500 determination for tax years 2012 and 2013 is arbitrary or unreasonable. It is, however, assigned weight by the Commission for purposes of finding that the County Board's decisions regarding the actual value of the Subject Property for tax years 2012 and 2013 are unreasonable or arbitrary.

GENERAL EQUALIZATION LAW

71. "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."⁴⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁵ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

³⁷ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

³⁸ *Id.* at 301-302.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

⁴² See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

⁴³ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 308.

⁴⁴ *Neb. Const.*, Art. VIII, §1.

⁴⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁴⁶

72. 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.⁴⁷
73. 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.⁴⁸ 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.⁴⁹
74. The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁵⁰ 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].”⁵¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁵²
75. “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.”⁵³
76. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”⁵⁴

EQUALIZATION ANALYSIS

77. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁵⁵ 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;⁵⁶ or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.⁵⁷
78. For equalization analysis purposes, the Taxpayer submitted PRFs from the Douglas County Assessor’s office for four alleged 1.5-story comparable parcels located in the Subject Property’s DFA subdivision. The Taxpayer presented a comparability analysis

⁴⁶ *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).

⁴⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁹ *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).

⁵⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁵¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵² *Id.* at 673, 94 N.W.2d at 50.

⁵³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵⁴ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁵⁵ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵⁶ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁵⁷ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

determining that three of these properties were comparable to the Subject Property. The County's representative agreed that these three properties were comparable to the Subject Property.

79. A review of the PRFs submitted by the Taxpayer indicates that the properties submitted for consideration vary in terms of characteristics in comparison to the Subject Property. The size of the improvements, quality, condition, and amenities vary in comparison to the Subject Property. A review of the per square foot assessed value is applicable where properties are substantially similar.
80. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar in comparison to the Subject Property, so they do not constitute clear and convincing evidence for purposes of equalization relief. Based on the statement of the County's representative in terms of comparability, however, the average \$95.67 per square foot assessment of these three properties versus the Subject Property's \$115 per square foot assessment for tax years 2012 and 2013 is given weight for purposes of the Commission's decision herein finding that the County Board's decisions regarding the actual value of the Subject Property for tax years 2012 and 2013 are unreasonable or arbitrary.
81. The Taxpayer produced information about all sales of real property in the Subject Property's subdivision from 2009 through 2013, as well as the assessed values of all properties in the Subject Property's DFA subdivision.
82. Based on a review of the Taxpayer's information, the Commission does not find clear and convincing evidence that the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.
83. The Commission notes that the PRF for parcel #103069000 in the Fairacres Terrace subdivision submitted for consideration by the County in its 2013 Assessment Report indicates that it sold in May 2012 for \$340,000, and that its assessment was \$250,000 for tax years 2008 through 2013. The PRF for this parcel also indicates that the County Assessor's reappraisal model values amounted to \$303,900 in 2008 and \$362,200 in 2014, and that the County Assessor's model value amounted to \$325,700 in 2013.
84. While it is possible that parcel #103069000's assessment for tax years 2012 and 2013 is substantially less than 100% of market value, the documents before the Commission do not provide clear and convincing evidence regarding market value for equalization analysis purposes. The Commission notes, however, that "[e]qualization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value."⁵⁸ Thus, the Commission gives weight to the sales, assessment and valuation history of parcel #103069000 for purposes of its decision herein finding that the County Board's decisions regarding the actual value of the Subject Property for tax years 2012 and 2013 are unreasonable or arbitrary.

⁵⁸ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

BEST EVIDENCE OF VALUE

85. 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.⁵⁹
86. As previously noted, Taxpayer Exhibits B and E indicate that 95% of DFA sales in the period 2009 – 2013 (37 of 39 total sales) and 1991 – 2013 (268 of 281 total sales) did not exceed the Taxpayer's \$350,000 opinion of value. As also noted above, Taxpayer Exhibit E indicates that only 10 of the approximate 250 total DFA properties -- 4% -- were involved in the 13 sales exceeding \$350,000 from 1991 to 2013.
87. The County's \$263,400 valuation of the Subject Property for tax years 2002 – 2005 (see PRF and chart above) is an indicator of value for tax years 2012 and 2013 considering the following: (1) the only sales of 1.5-story properties in the Subject Property's DFA subdivision amounted to \$150,000 (2001), \$260,000 (2001), \$266,000 (2002), \$345,000 (2003), \$230,000 (2011); (2) valuation "reset" of many properties to pre-2007 levels due to the economic crisis and its aftermath; and (3) historical real estate appreciation rates.⁶⁰
88. The Commission notes that the Taxpayer's \$350,000 opinion of value is supported by the \$102.02 average assessed per square foot values of all six 1.5-story properties in the Subject Property's DFA subdivision and the \$99.40 average assessed per square foot values of four alleged 1.5-story comparable properties in DFA (the Commission notes that the County's representative stated that three of these four properties were comparable to the Subject Property, and that the average assessed per square foot value of these three properties is \$95.67 for tax years 2012 and 2013 vs. the Subject Property's \$115 per square foot assessment for those years).⁶¹
89. The Commission further notes that the that Taxpayer's \$350,000 opinion of value is also supported by a private sector Referee with appraisal certification hired by the County Board during the tax year 2013 protest period. This Referee wrote as follows: "Owner submitted too much data. A review of the MLS showing 350,000 range is correct."⁶²
90. For all of the reasons discussed above, the Commission finds that the best evidence of the actual value of the Subject Property for tax years 2012 and 2013 is the Taxpayer's \$350,000 opinion of value.

⁵⁹ 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).

⁶⁰ See, *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at p. 55 (New Jersey Tax Court 2013) (as indicated in the excerpts from this case set forth above, ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result -- I do note, however, that the first-time homebuyer credit in effect from 2008 through mid-2010 was another federal initiative that artificially supported some real estate values for a period of time).

⁶¹ See, Taxpayer's packet of information, pg. 38 (see page 37 for derivation of \$99.40 average and Exhibit O for derivation of \$102.02 average). The \$95.67 per square foot value referenced is the average of the tax year 2012 & 2013 assessments of the three parcels that the Parties agree are comparable to the Subject Property (parcel nos. 93247000 - \$101.79 psf, 93233000 - \$94.91 psf, and 93258000 - \$90.33 psf).

⁶² 2013 Assessment Report (Referee documentation). The Referee's \$350,000 recommendation, however, was overridden by the Referee Coordinator, who wrote as follows: "[A]ssessors (sic) staff inspected home, adjusted some data but chose not to recommend any changes in value. Very lengthy statements made by owner. It appears that there is a pending TERC case hopefully that will resolve the issues that concern the owner."

CONCLUSION

- 91. 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.
- 92. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

- 1. The Decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013 are vacated and reversed.
- 2. That the taxable value of the Subject Property for tax years 2012 and 2013 is:

Land	\$ 34,200
<u>Improvements</u>	<u>\$315,800</u>
Total	\$350,000

- 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 years 2012 and 2013.
- 7. This order is effective on November 21, 2014.

Signed and Sealed: November 21, 2014.

Thomas D. Freimuth, Commissioner