

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

David S. Nelson  
Appellant,

v.

Douglas County Board of Equalization  
Appellee.

Case No: 12R 311

Decision Affirming  
County Board of Equalization

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property is a residential parcel improved with a 1,148 square foot home located at 2747 Newport Avenue, 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 \$61,100 for tax year 2012.
3. David S. Nelson (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 \$55,900 valuation.
4. The County Board determined that the assessed value of the Subject Property was \$61,100 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 July 29, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. David S. Nelson, the Taxpayer, appeared at the hearing.
8. Larry Thomsen, an assessor with the Douglas County Assessor’s Office, appeared at the hearing for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record Card (herein referred to as “PRC”) contained in the Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$61,100 determination for tax year 2012 includes \$5,900 for land and \$55,200 for the improvement component.
10. The County’s Assessment Report indicates that the County Board’s \$55,200 determination attributable to improvements for tax year 2012 is based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.<sup>1</sup> The Assessment Report contains a document entitled “Market

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

Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement.

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

<b>YEAR EFFECTIVE</b>	<b>DATE OF CHANGE</b>	<b>LAND VALUE</b>	<b>IMPROVE VALUE</b>	<b>TOTAL VALUE</b>	<b>REASON</b>
2012	8/7/2012	\$5,900	\$55,200	\$61,100	County Board
2012	3/9/2012	\$5,900	\$55,200	\$61,100	Reappraisal by County Assessor
2011	12/4/2012	\$5,900	\$55,200	\$61,100	TERC
2011	8/9/2011	\$5,900	\$68,100	\$74,000	County Board
2008	8/7/2008	\$5,900	\$68,100	\$74,000	County Board
2008	3/10/2008	\$5,900	\$76,600	\$82,500	Reappraisal by County Assessor
2005	3/19/2005	\$5,900	\$65,600	\$71,500	Reappraisal by County Assessor
2002	3/24/2002	\$5,900	\$48,600	\$54,500	Reappraisal by County Assessor
2001	7/5/2001	\$5,900	\$34,500	\$40,400	County Board
2001	3/16/2001	\$5,900	\$34,500	\$40,400	MVU (Acronym Unknown)

12. The PRC indicates that the Subject Property is a 1,148 square foot residence built in 1925, with an effective age of 87 years. The PRC rates the Subject Property’s quality as “Average” and its condition as “Fair.”
13. The Assessment Report contains a note entered by County Assessor staff stemming from an interior and exterior inspection on February 21, 2012, which references several adjustments to the characteristics of the Subject Property including the following: (1) condition lowered from Average to Fair; (2) change from 1.5 story finished to 1.5 story unfinished; and (3) change finished square footage from 1,538 to 1,148.
14. The Taxpayer stated that he has lived in the Subject Property for approximately 40 years, and that while the Minne Lusa neighborhood where the parcel is located includes homes that continue to be nice and well-kept, crime in the area has significantly impacted property values.
15. The Taxpayer submitted documentation regarding the sale/assessment history of four homes near the Subject Property in support of his assertion that the actual value of the Subject Property was \$55,900 for tax year 2012. This documentation includes screenshots from the Douglas County Assessor’s website (PRCs were not submitted for any of the parcels), together with maps depicting the location of the parcels (all appear to be within two to six blocks of the Subject Property). The Taxpayer did not submit a fee appraisal of the Subject Property or other parcels at the hearing.
16. The Taxpayer asserted that distressed or otherwise depressed transactions significantly impacted the market in the Subject Property’s market area in the aftermath of the economic crisis.
17. As indicated previously, the County Board provided the Commission with an Assessment Report which contains the PRCs for the Subject Property and three alleged comparable properties in the Subject Property’s market area that sold during tax years 2009 through 2011.

18. The County's Assessment Report includes a "Sales Comparables" chart that sets forth information concerning the three sales (two Average condition homes, one Fair condition) of alleged comparable properties in the Subject Property's market area, including sales in 2011 and 2010, each of which is within the acceptable two-year look-back period preceding the 2012 assessment date (the third sale for \$78,900 occurred on May 17, 2009, which is outside the two-year look-back period that began on July 1, 2009). These transactions generated sales prices amounting to \$34,500, \$57,500 and \$78,900.

### STANDARD OF REVIEW

19. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup> "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."<sup>3</sup>
20. 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."<sup>4</sup> That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."<sup>5</sup>
21. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>6</sup>
22. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

### GENERAL VALUATION LAW

23. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>8</sup>
24. "Actual value, market value, and fair market value mean exactly the same thing."<sup>9</sup>

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<sup>2</sup> 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).

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

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

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

<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

<sup>8</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

25. 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.<sup>10</sup>
26. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>11</sup>
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>12</sup>
28. 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.<sup>13</sup>

### **VALUATION ANALYSIS**

29. The County Board relied upon the County Assessor's opinion of the actual value of the Subject Property as determined by a sales comparison approach and a mass appraisal model.<sup>14</sup>
30. The Commission notes that the Taxpayer's four alleged comparable sale properties vary in terms of characteristics, including location, age, design, condition, and quality.
31. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.<sup>15</sup> If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.<sup>16</sup> The Commission finds that without adjustments the Taxpayer's four alleged comparable sale properties do not constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
32. 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

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<sup>10</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

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

<sup>12</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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

<sup>14</sup> See, Assessment Report.

<sup>15</sup> See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>16</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

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.

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

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

#### **DISTRESSED SALES AS INDICATOR OF VALUE ANALYSIS**

34. 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.
35. The County's representative stated that the County does not consider distressed transactions valid for use in its valuation models. He further indicated that the County Assessor's mass appraisal models used to value properties in the Subject Property's market area exclude foreclosure sales and other distressed sales that are deemed not arm's-length.
36. *The Dictionary of Real Estate Appraisal* defines an arm's-length transaction as follows: "A transaction between unrelated parties under no duress."<sup>17</sup>
37. 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."<sup>18</sup>
38. 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

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<sup>17</sup> *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> Ed., Appraisal Institute, 2002, at p. 18.

<sup>18</sup> *The Appraisal of Real Estate*, 13<sup>th</sup> Edition, Appraisal Institute, 2008, at p. 304.

property is adapted and for which the real property is capable of being used.<sup>19</sup>

39. 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.”<sup>20</sup>
40. 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.<sup>21</sup> 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.<sup>22</sup> Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**<sup>23</sup>

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

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

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October

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<sup>19</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>20</sup> *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

<sup>21</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>22</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

<sup>23</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

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.<sup>24</sup>

42. 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.<sup>25</sup>

43. 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.<sup>26</sup>
44. 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.<sup>27</sup> For instance, in 2012 the Oregon Tax Court

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<sup>24</sup> *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).

<sup>25</sup> *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).

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

<sup>27</sup> *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,

considered whether “foreclosures and short sales characterize the market for the subject property” in *Greene v. Benton County Assessor*.<sup>28</sup> 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.”<sup>29</sup>

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

[P]roperty purchased through foreclosure may be “a voluntary *bona fide* arm’s-length transaction between a knowledgeable and willing buyer and a willing seller.” *Ward v. Dept. of Revenue*, 293 Or 506, 508, 650 P2d 923 (1982). “There are narrow exceptions determined on a case-by-case basis to the holding that bank-owned property sales are not typically representative of real market value.” *Brashnyk v. Lane County Assessor (Brashnyk)*, TC-MD No 110308 at 8, WL 6182028 \*5 (Dec 12, 2011). “[W]here the majority of sales are distress, it would seem that that kind of sale would provide a more accurate reflection of the market.” *Morrow Co. Grain Growers v. Dept. of Rev. (Morrow)*, 10 OTR 146, 148 (1985)..... Plaintiffs have not presented any evidence that foreclosures and short sales characterize the market for the subject property. Plaintiffs provided a list of sales that occurred between 2003 and 2011 in the subject property neighborhood; unadjusted sale prices in 2008, 2009, and 2010, ranged from \$335,000 to \$452,000. It is not clear which, if any, of those sales were foreclosures or short sales. Plaintiffs’ purchase of the subject property for \$295,000 in May 2009 is the lowest sale price identified for any of the years, 2003 through 2011. “Usually, one sale does not make a market.” *Truitt Brothers, Inc. v. Dept. of Rev.*, 302 Or 603, 609, 732 P2d 497 (1987).<sup>30</sup>

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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).

<sup>28</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

<sup>29</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 3 (Oregon Tax Court 2012).

<sup>30</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).



46. 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.<sup>31</sup> 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.’<sup>32</sup>

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

‘[Short sales] should be carefully reviewed to determine if they meet the relevant criteria for a comparable. The mere fact that there is, presumably, some duress on the part of the seller (the upside down owner) that prompts the sale, does not itself disqualify the transaction from consideration, especially when there is some duress in the market. This situation is analogous to the owner losing his job and selling because he can’t make the mortgage payments. *We wouldn’t discount that sale simply because the owner was very motivated to sell* (some duress) so long as the sale was an arm’s-length with adequate exposure and contained no unusual financing terms or elements that couldn’t be adjusted out.’<sup>33</sup>

48. 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*

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<sup>31</sup> *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).

<sup>32</sup> *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011).

<sup>33</sup> *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 9 (Oregon Tax Court 2012). [Emphasis in original Memorandum.]

*market characteristic, it is appropriate to include such sales in a comparable sale's value analysis or a ratio study.*<sup>34</sup>

49. 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.<sup>35</sup>

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

Sales from banks should not be automatically considered a non-arm's-length transaction especially if you do not have an abundant supply of sales. Typically, values will be on the low end of the value range, but they may be considered arm's length transactions and included in the ratio study if all other criteria for being an open market arm's-length transaction are met.<sup>36</sup>

51. The Taxpayer submitted documentation analyzing the sale/assessment history of four homes near the Subject Property in support of his assertion that the actual value of the Subject Property was \$55,900 for tax year 2012. All of these parcels sold for less than the year-of-sale assessed value (three of the four parcels sold for significantly less), which creates concern whether the County's mass appraisal model accurately determines actual value in the Subject Property's neighborhood (the screenshots from the Douglas County Assessor's website indicates that all four sales were "Valid").

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<sup>34</sup> *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at pgs. 8-9 (Oregon Tax Court 2012). [Emphasis in original Letter.]

<sup>35</sup> 2012 Statewide Equalization Exhibit 107, p. 31.

<sup>36</sup> 2011 Statewide Equalization Exhibit 107, p. 117; 2012 Statewide Equalization Exhibit 107, p. 32.

52. The Taxpayer did not, however, provide analysis regarding the ratio of distressed sales to sales considered valid by the County in the market area. Therefore, it is not clear whether distressed transactions constitute either a significant portion or a majority of the total market area sales in the two-year period preceding the assessment date that is analyzed by the County for purposes of constructing its mass appraisal models.
53. 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

54. “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.”<sup>37</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>38</sup> 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.<sup>39</sup>
55. 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.<sup>40</sup>
56. 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.<sup>41</sup> 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.<sup>42</sup>
57. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>43</sup> 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].”<sup>44</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>45</sup>
58. “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.”<sup>46</sup>

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<sup>37</sup> *Neb. Const.*, Art. VIII, §1.

<sup>38</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>39</sup> *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).

<sup>40</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>41</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>42</sup> *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).

<sup>43</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>44</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>45</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>46</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

59. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”<sup>47</sup>

### EQUALIZATION ANALYSIS

60. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of properties submitted for consideration. In support of this assertion, the Taxpayer submitted documentation analyzing the assessment history of four parcels. This documentation includes screenshots from the Douglas County Assessor’s website (PRCs were not submitted for any of the parcels), together with maps depicting the location of the parcels (all appear to be within two to six blocks of the Subject Property).
61. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>48</sup> 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;<sup>49</sup> 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.<sup>50</sup>
62. The County’s representatives stated that they could not opine regarding the similarity of the Subject Property in comparison to the four parcels submitted by the Taxpayer because PRCs were not submitted. The Commission also notes that the screenshots from the Douglas County Assessor’s website indicate that three of the four parcels submitted for consideration by the Taxpayer were assessed at the same or higher value in comparison to the Subject Property for tax year 2012.
63. In part because PRCs were not submitted by the Taxpayer for the four parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer did not produce clear and convincing evidence that the Subject Property was not equalized with other similar real property by the County Board for tax year 2012, or that the assessed value of the Subject Property was grossly excessive.
64. 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 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.

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<sup>47</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

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

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

<sup>50</sup> See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

**CONCLUSION**

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

**ORDER**

IT IS ORDERED THAT:

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

Land	\$ 5,900
<u>Improvements</u>	<u>\$ 55,200</u>
Total	\$ 61,100

- 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 October 29, 2014.

Signed and Sealed: October 29, 2014.

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Thomas D. Freimuth, Commissioner