

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 12R 347

Decision Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,381 square foot townhome located at 2818 Eagle Hills Circle, Papillion, Sarpy County, Nebraska. The Subject Property’s legal description is found in the Case File.
2. The Sarpy County Assessor assessed the Subject Property at \$193,994 for tax year 2012.
3. Bel Fury Investments Group, LLC (herein referred to as the “Taxpayer”) protested this value to the Sarpy County Board of Equalization (herein referred to as the “County Board”) and requested a \$164,891 valuation.
4. The County Board determined that the assessed value of the Subject Property was \$193,994 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 June 4, 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. Scott Bloemer, Managing Member of Bel Fury Investments Group, LLC, appeared at the hearing on behalf of the Taxpayer.
8. Laurence Houlton and Jackie Morehead, employees of the Sarpy County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card (PRC) submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$158,777 in January 2007. Mr. Bloemer, Managing Member of Bel Fury Investments Group, LLC, who appeared at the hearing on behalf of the Taxpayer, stated that the Subject Property has been rented since the date of purchase.
10. The PRC for the Subject Property indicates that the County Board’s \$193,994 determination for tax year 2012 includes \$30,000 for land and \$163,994 for the improvement component.
11. The PRC indicates that the County Board’s \$163,994 determination attributable to improvements for tax year 2012 is based on a cost approach mass appraisal model.
12. The PRC and other documentation submitted at the hearing indicate that the Subject Property is located near the Eagle Hills Golf Course.

13. The PRC indicates that the Subject Property is a 1,381 square foot ranch townhouse built in 1999, with an effective age of 13 years. The PRC rates the Subject Property's quality as "Good" and condition as "Average" for tax year 2012.
14. The Taxpayer submitted documentation analyzing the sale/assessment history of four townhomes/duplexes in Sarpy County in support of its assertion that the actual value of the Subject Property was \$164,891 for tax year 2012. This documentation includes Property Record Cards for each of the parcels and a spreadsheet with proposed adjustments and calculations regarding the values of the parcels. The Taxpayer did not submit a fee appraisal of the Subject Property or other parcels at the hearing.
15. The County submitted a listing of all of the assessed values for properties in the neighborhood of the Subject Property, statistical reports of sales in the Subject Property's neighborhood which included sales assessment ratios for the sold properties. The County also submitted a table listing three duplex properties it deemed comparable to the Subject Property in the Western Hills and Woodlands Oaks subdivisions, together with statistical reports of the sales of these parcels which included sales/assessment ratios.
16. The PRC for the townhome attached to the Subject Property (2816 Eagle Hills Circle) was also submitted at the hearing, together with County documentation indicating that the Subject Property was equalized with this parcel for tax years 2011 and 2012.
17. The Taxpayer's Property Valuation Protest for tax year 2012 states as follows: "On May 27, 2012, in TERC Case #11R-244, the Sarpy County Assessor and our firm stipulated to a value for the subject of \$185,387, based on equalization. To say the subject is now valued at its 2012 assessment of \$193,994, would be to imply the market has appreciated 4.64%, which it has not."
18. Mr. Houlton of the County Assessor's Office submitted a document to the County Board during the 2012 protest, which states as follows: "The TERC case 11R-244 was about equalization with the other half of the townhouse (2816 Eagle Hills dr. parcel number symbol 011343591) the two sides have now been equalized. I have attached the reports for each parcel."
19. As indicated above and charted below, the Taxpayer's appeal to the Commission for tax year 2011 was settled at a value of \$185,387 for the Subject Property on May 27, 2012.¹ The PRC for the adjacent attached townhome at 2816 Eagle Hills indicates that this parcel sold for \$180,000 in May of 2012. The documents and statements submitted at the hearing indicate that this transaction was arm's-length.
20. The County asserted that while the Subject Property is substantially similar to the adjacent parcel located at 2816 Eagle Hills Circle, the Subject Property is superior to the comparable because it is not located directly on a busy street. The Taxpayer asserted that the location of the Subject Property does not materially impact its valuation in comparison to the parcel located at 2816 Eagle Hills.²

¹ I note that the 2/28/14 one-page assessment history summary authored by Mr. Houlton of the County Assessor's Office, which includes reference to equalization with the 2816 Eagle Hills parcel, indicates that the Subject Property has been assessed slightly less than that attached townhome due to condition issues stemming from the Subject's rental status and other minor characteristic differences (the Subject Property's Fair condition rating for 2011 was raised to Average for 2012, while the attached comparable was rated Average in terms of condition for both years). Based on statements and documents submitted at the hearing by both parties, it is the Commission's understanding that the 2816 Eagle Hills townhome that is attached to the Subject Property was owner-occupied at least from 2004 through May 2012 when it was sold for \$180,000.

² A photo of the location of the Subject Property in comparison to the 2816 Eagles Hill parcel indicates that the properties are situated at least several hundred feet south of Cornhusker Road, a busy four-lane thoroughfare.

21. The Subject Property's PRC contains the following sales/assessment history:

Sale Date	Sale Price	Grantor	Grantee
1/4/2007	\$158,777	Robert G Young	Taxpayer (Bel Fury)
3/11/2001	\$185,000	Eagle Villas LLC	Robert G & Nancy K Young

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$23,000	\$165,407	\$188,407
2012	\$30,000	\$163,994	\$193,994
2011	\$30,000	\$155,387	\$185,387
2010	\$30,000	\$156,890	\$186,890
2009	\$30,000	\$160,100	\$190,100
2008	\$30,000	\$162,893	\$192,893
2007	\$27,000	\$169,673	\$196,673
2006	\$27,000	\$167,725	\$194,725
2005	\$27,000	\$161,986	\$188,986
2004	\$27,000	\$151,635	\$178,638

22. The PRC for the adjacent comparable located at 2816 Eagle Hills Circle contains the following sales/assessment history:

Sale Date	Sale Price	Grantor	Grantee
5/12/2012	\$180,000	Richard S & Carol H Boyse	PRC Does Not Contain Grantee
4/22/2001	\$165,900	Tri-Builders Inc.	Richard S & Carol H Boyse
4/5/2001	\$135,000	Eagle Villas LLC	Tri-Builders Inc.
6/4/1999	\$117,900	Eagle Ridge Development - C	Eagle Villas LLC

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$23,000	\$166,120	\$189,120
2012	\$30,000	\$164,697	\$194,697
2011	\$30,000	\$158,103	\$188,103
2010	\$30,000	\$157,487	\$187,487
2009	\$30,000	\$160,710	\$190,710
2008	\$30,000	\$163,515	\$193,515
2007	\$27,000	\$170,315	\$197,315
2006	\$27,000	\$145,965	\$172,965
2005	\$27,000	\$140,582	\$167,582
2004	\$27,000	\$131,352	\$158,352

STANDARD OF REVIEW

23. The Commission’s review of the determination of the County Board of Equalization is de novo.³ “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.”⁴
24. 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.”⁵ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁶
25. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁷
26. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

GENERAL VALUATION LAW

27. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹
28. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁰
29. 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.¹¹
30. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
31. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
32. Nebraska Statutes section 77-112 defines actual value as follows:

³ 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).

⁴ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

⁹ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹⁰ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹¹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹³ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁴

VALUATION ANALYSIS

33. The Taxpayer applied adjustments to the sale price of four Sarpy County parcels improved with townhouses/duplexes and then averaged the adjusted per square foot sale value of these same four parcels for purposes of arriving at its \$164,891 opinion of value. The Taxpayer's approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
34. The Commission notes that appraisal literature contains caution regarding the use of averaging as a part of the sales comparison approach. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."¹⁵
35. The sales comparison approach has a defined systematic procedure that requires, among other steps, that the individual appraising the Subject Property "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences."¹⁶
36. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁷ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371.¹⁸
37. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the four parcels submitted for consideration were truly comparable.

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁵ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 308.

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at pgs. 301-302.

¹⁷ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 141.

¹⁸ Neb. Rev. Stat. §77-1371 (Reissue 2009).

38. Based on a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's \$164,891 opinion of value does not by itself constitute clear and convincing evidence that the County Board's \$193,994 determination for tax year 2012 is arbitrary or unreasonable.
39. Further, the Taxpayer asserted that the County failed to sufficiently consider the 2007 - 2008 economic crisis for purposes of valuing the Subject Property. General guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.¹⁹ 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.²⁰ 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.**²¹

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

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

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial "as of October 1, 2009, the macro economy had entered into what many commentators termed a 'New Normal,' meaning that the developed nations would

¹⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

²⁰ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

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.²²

41. 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.²³

42. 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.²⁴
43. 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 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. Significantly, the Taxpayer purchased the Subject Property for \$158,777 in January 2007.

²² *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).

²³ *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).

²⁴ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

44. The reliability of the County's cost approach is limited in the case of residential properties such as the Subject Property.²⁵ In this regard, the New Jersey Tax Court stated as follows in the Borgata casino case referenced above regarding the limitations of the cost approach in the aftermath of the economic crisis due to difficulty estimating economic depreciation:

[T]he cost approach necessarily requires the difficult task of accurately measuring economic obsolescence. Given that so much of the value of a casino-hotel's real property is tied to the earning potential of gaming operations, a credible analysis of economic conditions and the translation of those conditions into an appropriate measure of economic obsolescence are essential to reaching a reliable value under the cost approach. This is particularly true here, where the subject property underwent an expensive expansion approved shortly prior to drastic negative changes in the national economy and an expansion in regional competition. The court is not satisfied that, in light of the timing of construction and the changes in the economy and competitive environment, the cost approach would provide a more credible value determination than would the income approach. The court does not hold that the cost approach is inapplicable to the valuation of casino-hotels in New Jersey. It will suffice to hold that based on the record adduced at trial, the income approach is the most reliable method through which to determine the true market value of the subject property on the relevant valuation dates.²⁶

45. The PRC indicates that the assessed value of the Subject Property increased from \$178,638 in tax year 2004 to \$193,994 in tax year 2012. This dramatic increase and the limited reliability of the cost approach in the aftermath of the economic crisis 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 year 2012. The May 2012 sale of the parcel adjacent to the Subject Property located at 2816 Eagle Hills for an amount (\$180,000) significantly less than its assessed value for tax year 2012 (\$194,697) adds to this concern. Therefore, based on the documents and statements submitted at the hearing, the Commission finds sufficient evidence that the County Board's \$193,994 determination of the Subject Property's actual value derived from the cost approach for tax year 2012 is arbitrary or unreasonable.²⁷
46. 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.²⁸

²⁵ *Appraising Residential Properties*, 4th Edition, Appraisal Institute, 2007, at p. 260.

²⁶ *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).

²⁷ Assessed value, as determined by the County Board for tax year 2012, 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 protest proceeding.

²⁸ 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).

47. The Commission is not persuaded that the Taxpayer's \$164,891 opinion of value is the best evidence because it does not satisfy commonly accepted appraisal techniques. It is, however, an indicator of value, especially given the Taxpayer's \$158,777 purchase of the Subject Property in January 2007.
48. The County's \$178,638 valuation of the Subject Property for tax year 2004 (see PRC and chart above) is also an indicator of value for tax year 2012 considering the following: (1) the Taxpayer's \$158,777 purchase in January 2007; (2) valuation "reset" of many properties to pre-2007 levels due to the economic crisis and its aftermath; (3) historical real estate appreciation rates; and (4) the \$180,000 sale of 2816 Eagle Hills.²⁹
49. As discussed previously, the County equalized the Subject Property with the adjacent 2816 Eagle Hills parcel for tax years 2011 and 2012, and the above assessment history charts indicate that the properties were similarly assessed for tax years 2007 through 2013.³⁰ Thus, the Commission finds that the \$180,000 sale price of 2816 Eagle Hills in May 2012 is a persuasive indicator of Subject Property actual value for tax year 2012.
50. I am mindful that the Nebraska Court of Appeals has stated that "[s]ale price is not synonymous with actual value or fair market value."³¹ I also note, however, that the Nebraska Supreme Court stated as follows in *Potts v. Board of Equalization of Hamilton County*: "where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration."³²
51. Based on the documents and statements reviewed in this case, together with the Nebraska Supreme Court's holdings in *Potts* and *In re Estate of Craven*, I find that the \$180,000 sale of 2816 Eagle Hills in May 2012 is a powerful indicator of actual market value for that property and the Subject Property for tax year 2012 and is the best evidence of value for purposes of assessing "current market condition" in the aftermath of the 2008 economic crisis. I note that while the case law discussed above from jurisdictions outside of Nebraska is not controlling, it is instructive for purposes of this finding.
52. For all of the reasons discussed above, the Commission finds that the actual value of the Subject Property for tax year 2012 is \$180,000.

GENERAL EQUALIZATION LAW

53. "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

²⁹ 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).

³⁰ See, PRCs for Subject Property and 2816 Eagle Hills (as charted above, these PRCs set forth the 2004 – 2013 assessment history of these parcels). I once again note that the 2/28/14 one-page summary assessment history authored by Mr. Houlton of the County Assessor's Office, which includes reference to equalization with the townhome at 2816 Eagle Hills, indicates that the Subject Property has been assessed slightly less than this attached parcel due to condition issues stemming from the Subject's rental status and other minor characteristic differences (see above assessment history charts).

³¹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

³² *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

by this Constitution.”³³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁴ 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.³⁵

54. 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.³⁶
55. 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.³⁷ 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.³⁸
56. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁹ 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].”⁴⁰ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴¹
57. “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.”⁴²

EQUALIZATION ANALYSIS

58. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of four comparables referenced previously. In support of this assertion, the Taxpayer submitted documentation analyzing the assessment history of the four parcels. This documentation includes Property Record Cards and a spreadsheet
59. The County also submitted statistical reports comparing the ratio of assessed value to market value for other real property in the neighborhood of the Subject Property and a listing of all assessed values for property in the neighborhood of the Subject Property.
60. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴³ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real

³³ *Neb. Const.*, Art. VIII, §1.

³⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁵ *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).

³⁶ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁷ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁸ *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).

³⁹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴¹ *Id.* at 673, 94 N.W.2d at 50.

⁴² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴³ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.⁴⁴

61. The evidence submitted demonstrates that similar properties were assessed at similar values and that the Subject Property was assessed at a uniform percentage of market value when compared to other real property.

CONCLUSION

62. 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.
63. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2012 is vacated and reversed.
2. That the taxable value of the Subject Property for tax year 2012 is:

Land	\$ 30,000
<u>Improvements</u>	<u>\$ 150,000</u>
Total	\$ 180,000

3. This decision and order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this 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 September 15, 2014.

Signed and Sealed: September 15, 2014.

Thomas D. Freimuth, Commissioner

⁴⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).