

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

JOHN J. RICKETTS,)	
)	
Appellant,)	CASE NO. 02R-108
)	
vs.)	
)	FINDINGS AND ORDERS
DOUGLAS COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	
)	

Filed August 7, 2003

Appearances:

For the Appellant:	Robert J. Huck, Esq. James F. Kasher, Esq. John M. Prososki, Esq. Crocker, Huck, Kasher, P.C. 2120 South 72 nd Street, Suite 1250 Omaha, NE 68124
For the Appellee:	James R. Thibodeau, Esq. Deputy Douglas County Attorney Douglas County Attorney's Office 909 Civic Center Omaha, NE 68183

Before: Commissioners Hans, Lore, Wickersham and Reynolds.
Reynolds, Chairman, for the Commission.

SUMMARY OF DECISION

The Commission vacates and reverses the decision of the Douglas County Board of Equalization which granted Taxpayer's equalization protest only in part, and grants Taxpayer's request for a further reduction in the assessed value of the subject property for tax year 2002.

NATURE OF THE CASE

John J. Ricketts ("the Taxpayer") owns certain residential real property located in Douglas County, Nebraska ("the subject property"). The Taxpayer acquired the subject property in 1999 for \$6,500,000. (E26:3). The Assessor determined that for tax year 2002, the actual or fair market value of the subject property was \$6,035,900. (E1:2). The Taxpayer filed a protest with the Douglas County Board of Equalization ("the Board") alleging that the value of the subject property as determined by the Douglas County Assessor was not equalized with comparable property. (E6:2). By way of relief, Taxpayer requested that the proposed 2002 value be reduced to \$3,646,500. (E6:1). A referee appointed by the Board recommended that the assessed value of the property be equalized with comparable properties at a value of \$4,769,960. (E24:2). The Board adopted the referee's recommendation and granted the protest in part. The Board set the value of the subject property for purposes of taxation at \$4,770,000, (E1:2) for tax year 2002, from which decision the Taxpayer appeals.

I.

EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002) without objection: the Commission's case file for Case No. 02R-

108; the Tax Equalization and Review Commission's Brochure; the Nebraska Constitution; the Nebraska State Statutes and the amendments to those statutes; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); *Title 298, Nebraska Administrative Code* (the Real Estate Appraiser Board's Rules and Regulations); the *2002 Reports and Opinion of the Property Tax Administrator for Douglas County*; the *2002 Statewide Equalization Proceedings*; the Nebraska Real Estate Appraiser Board Certification Requirements; the Nebraska Real Estate Appraiser Board Education Core Curriculum; the *Marshall Swift Residential Cost Handbook*; the *Marshall Swift Residential Cost Handbook Historical Information*; the *Nebraska Assessor's Reference Manual* (Reissue 2002); four standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); *Glossary for Property Appraisal and Assessment* (1997); and *Mass Appraisal of Real Property* (1999); two standard reference works published by the Appraisal Institute: *The Dictionary of Real Estate Appraisal, 3rd Ed.*, Appraisal Institute (1993); and *The Appraisal of Real Estate, Twelfth Edition* (2001); the *Uniform Standards of Professional Appraisal Practice* (2002); *Black's Law Dictionary, Sixth Ed.*, West Publishing Co. (1990); and *Webster's Third New International Dictionary*, Merriam-Webster, Inc. (1993).

The Commission also received certain exhibits and testimony during the course of the hearing, including the relevant evidence from Case Number 00R-89, which was heard immediately prior to the hearing on the merits of this appeal. The Parties to and the subject matter of that proceeding are identical to those in this appeal. The only difference is the tax year at issue: 2000, in Case Number 00R-89, and 2002, in Case Number 02R-108.

II. ISSUES BEFORE THE COMMISSION

Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002) provides that the Commission's jurisdiction is limited to those questions raised before the County Board of Equalization and to those issues sufficiently related in content and context to be deemed the same question at both levels. *Arcadian Fertilizer v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 505, 583 N.W.2d 353, 357 (1998).

The Taxpayer did not protest the value of the land component of the subject property as determined by the Assessor (\$621,800). (E6:1). The value of that component of the subject property is therefore not properly before the Commission. *See, e.g., Bethesda Foundation v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 458, 640 N.W.2d 398, 402 (2002). The only issue before the Commission is the Taxpayer's allegation that the value as

determined by the Board for the improvements to the subject property is not equalized with comparable property.

**III.
STANDARD OF REVIEW**

The Taxpayer, in order to prevail, is required to demonstrate by clear and convincing evidence that (1) the decision of the Board was incorrect; and (2) that the decision of the Board was either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002). The Supreme Court has determined that in order to meet the "unreasonable or arbitrary" burden of persuasion the Taxpayer must adduce clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) that the Board failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the value as determined by the Board was unreasonable. *Garvey Elevators v. Adams County Bd. of Equal.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

**IV.
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (Cum. Supp. 2002). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5) (Cum. Supp. 2002).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

**A.
PROCEDURAL FINDINGS**

1. The Douglas County Assessor ("the Assessor") determined that the actual or fair market value of the subject property was \$6,035,900 as of the assessment date. (E1:2). The Assessor further determined that the actual or fair market value of the land component was \$621,800, and that the actual or fair market value of the improvements was \$5,414,100. (E1:2).
2. The Taxpayer did not protest the value of the land component (\$621,800) as determined by the Assessor. (E6:1). The Taxpayer timely filed a protest of the proposed valuation of the improvement component of the subject property. The protest alleged that the value of the improvements were not

- equalized with comparable property. (E6). The protest requested that the improvements to the subject property be valued for purposes of equalization at \$3,024,700. (E6:1).
3. The Board granted the protest in part. (E8:2). The Board determined that the equalized value of the improvement component of the subject property was \$4,148,200. (E1:2).
 4. The Taxpayer thereafter timely filed an appeal of the Board's decision to the Commission. (Appeal Form).
 5. The Commission served the Board with a Notice in Lieu of Summons on September 17, 2002. (*Affidavit of Service*).
 6. The Board timely filed an Answer on September 20, 2002.
 7. The Commission issued a Notice of Hearing on November 5, 2002. The Notice of Hearing set the matter for a hearing on the merits of the appeal for the 13th day of February, 2003.
 8. The Taxpayer moved to consolidate the hearing on the merits of the appeal in Case Number 00R-89 with the hearing on the merits of this appeal. The parties and subject matter of each appeal is identical, with the exception of the tax years at issue (2000 and 2002). The Board objected, citing *DeVore v. Board of Equalization* 144 Neb. 351, 13 N.W.2d 451 (1944) and *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). These decisions stand for the proposition that the prior

year's assessment is not relevant to the subsequent year's valuation.

9. The Commission sustained the objection.
10. The Board then proceeded to adduce evidence of assessed values for 2001 in support of its 2002 decision. (E20 and E23).
11. This evidence was received without objection from the Taxpayer. Evidence of the 2001 assessed values for the subject property as well as the Taxpayer's comparable properties and the Board's comparable properties are therefore properly before the Commission.
12. The Taxpayer's 2000 appeal concerning the equalized value of the subject property is found in the Commission's records at 00R-89. The hearing on the merits of that appeal was held on February 13, 2003, immediately prior to the hearing on this, the Taxpayer's 2002 appeal. The Parties stipulated that the evidence and argument heard and received by the Commission for Case Number 00R-89 should be made a part of the record for these proceedings for the purpose of hearing and deciding this matter.

B.

SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS

1. The subject property consists of a tract of land legally described as "LOT 27 BLOCK 0 LT 25 & IRR N 81 FT LT 26 & -

EX E 30 S 320 FT & IRR S 280 W 220 FT -" in the City of Omaha, Douglas County, Nebraska. (E1:2). The tract of land is 165,825 square feet in size, or approximately 3.81 acres. (E2:3).

2. The tract of land is improved with a single-family residence which has 17,284 square feet of above-grade finished living area. (E2:3; E20:3; E21:1). The residence has seven bedrooms, eight and one-half bathrooms, and an attached garage. (E20:3). The house also has an unfinished basement which is approximately 2,148 square feet in size. (E20:3).
3. The Board did not provide complete copies of the "Computer Assisted Mass Appraisal" ("CAMA") information for the subject property or for its comparables. Page Four of Exhibit 21, for example has been cut off at the bottom. The dimensions of the improvement components identified on Exhibit 2, page 3, cannot be verified. There is also no information in Exhibit 21 concerning the valuation methodology used by the Assessor to determine the value of the improvement component for tax year 2002. There is also no evidence concerning which professionally accepted mass appraisal methodology was used to value the Board's comparables. There is also no evidence concerning the cost or income factors used to determine value.

4. The residential improvements to the subject property were originally built in 1935, and completely remodeled in 1995. (E2:3; E21:1).
5. The "Physical Condition" of the improvements is listed as "Good" on Exhibit 2, page 3. However, the "Physical Condition" of the property is listed as "Excellent" on Exhibit 21, page 1 and again on Exhibit 21, page 1. Nothing in the record explains the difference in "physical condition."
6. The "Quality of Construction" for the subject property is shown as "X+25" on Exhibit 2, page 3, which is above "Excellent." The "Quality of Construction" for the subject property is shown as "Excellent" on Exhibit 21, page 1.
7. The Taxpayer is the owner of record of the subject property. (E1; E2).
8. The Taxpayer did not challenge the actual or fair market value of the subject property as determined by the Assessor. (E6:1; E24:1; E24:2). The only issue presented to the Board was the question of equalization of the value of the improvement component of the subject property. (E6:1; E24:1 - 2).
9. The Assessor determined that the actual or fair market value of the improvement component of the subject property was \$5,414,100. (E1:2).

10. The Board equalized the value of the improvement component at \$4,148,200. (E1:2).
11. The level of assessment for the improvement component of the subject property as of the assessment date, measured against the actual or fair market value as determined by the Assessor, was 76.62%. [Board's value of \$4,148,200 ÷ Assessor's value of \$5,414,100 = 76.62%.]
12. The subject property is located in a neighborhood within the City of Omaha. The neighborhood is generally defined as North of Dodge Street, South of Cuming Street, East of 69th Street, and West of 62nd Street. (E18). The neighborhood, is an exclusive "Executive Neighborhood." No testimony concerning the number of residential parcels included within the neighborhood appears in the record.
13. The Taxpayer adduced the testimony of a Certified General Appraiser licensed by the State of Nebraska ("the Taxpayer's Appraiser").
14. The testimony of the Taxpayer's Appraiser did not include an opinion of value for the subject property or for any of the other properties offered as "comparables" by the Taxpayer.
15. The testimony adduced did not fall under any of the Standards contained in the Uniform Standards of Professional Appraisal Practice.

16. Although the witness was qualified as an expert, no "expert" testimony was offered by the Taxpayer's Appraiser.
17. The Taxpayer's Appraiser did offer testimony based on records of the Douglas County Assessor's Office. The records included fifteen residential properties located in the Fairacres Neighborhood. (E3; E4).
18. The Taxpayer's Appraiser also offered testimony based on twenty-one homes which are described as either "Preeminent Properties" or which appear on the "Douglas County Mansion List." (E5:19).
19. The Taxpayer's Appraiser testified to the size of the finished living area for each property, the assessed value of the improvements, and the assessed value per square foot of the finished living area. (E5:19). This testimony was also based on the records of the Assessor's Office.
20. The assessed value of the improvement component of the subject property was \$4,148,200 after Board action, or \$240.00 per square foot. [$\$4,148,200$ (assessed value of improvements) \div 17,284 square feet = \$240.00]. (E1:2; E2:3; E5:19).
21. The Taxpayer alleges that other homes in the Fairacres subdivision are comparable to the subject property.
22. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional

utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.

23. The Taxpayer, as required by the Commission's Order for Hearing, adduced copies of the Property Record Files for other properties in the Fairacres subdivision. (E3; E4).
24. The single-family residential property in the Fairacres subdivision closest in size to the subject property is located at 400 North Elmwood. This property has 7,770 square feet of above-grade finished living area and a finished basement which is 1,600 square feet in size. The improvements to this property were built in 1930, and remodeled in 1996. (E3:3). The physical condition of these improvements is "Good" and the "Quality of Construction" is "X+25" or "Excellent." (E3:3). The house has 4 bedrooms, 2 full baths, and two half baths. (E3:3).
25. Assuming without deciding that the "finished basement" on this property is finished to the same degree as the above-grade finished living area, the total size of the residential improvements is 9,370 square feet. The subject property is almost twice the size of the property located at 400 North Elmwood.
26. The Assessor's Office alleges that none of the single-family residential properties in the Fairacres subdivision are

truly "comparable," as that term is defined under professionally accepted mass appraisal methodologies, to the subject property. Exhibit 25, however, indicates three properties located in Fairacres qualify as "mansions" and are listed on the "Mansion List." (E25:1; E23).

27. The Commission finds and determines that none of the properties listed by the Taxpayer from the Fairacres Subdivision are "comparable" to the subject property.
28. The Douglas County Assessor's "Mansion List" or "Preeminent Property" list has five properties which are larger in terms of improvements than the subject property. (E5:19). The largest property is located at 8725 Rainwood, and is an improvement on leased land. (E4:1; E23:3). Exhibit 23, page 3, indicates that the property has 13,025 square feet of "IMPS SF." Two other exhibits, however, indicate that the property has 26,050 square feet of above-grade finished living area. (E5:19; E5:40). Construction of this home was started in 2001, and as of January, 2002, construction had not been completed. (See picture on E5:40, dated January, 2002). The assessed value of the partially completed improvements is \$201.42 per square foot of above-grade living area, based on 26,050 square feet of improvements. (E5:40). There is no data on the quality of construction or amenities. (E4:1 - 3).

29. Any party offering properties as "comparables" has an affirmative obligation to provide complete copies of the Property Record File for that property, as well as all information used to set the value of that property for the tax year at issue. *See, Order for Hearing*, November 5, 2002, page 2, ¶2. Neither the Taxpayer nor the Board adduced copies of the required information for this property.
30. The Commission, given the conflicting evidence concerning the size of the improvements, and the absence of the Property Record File for the property, cannot conclude that the improvement component of this property is comparable to the improvement component of the subject property.
31. The house with the next largest size of improvements is the property at 14243 Hamilton Street. This ranch-style house was built in 1993, and is 22,916 square feet in size. (E4:17). The house has four bedrooms, six full bathrooms, and six half-bathrooms. (E4:17). The "Physical Condition" of the improvements is "Good" and the "Quality of Construction" is "X+50" or "Excellent." (E4:17). The Taxpayer's Appraiser's spreadsheet indicates that the assessed value of the improvements was \$137.63 per square foot. (E5:19). However, Exhibit 4, page 16, establishes that after Board action the assessed value of the

improvements was \$2,603,600. (See also E4:17 "2002 VALUE 3,055,900;" and E4:16: "TOTAL VALUE \$3,055,900, of which IMPROVE VALUE = \$2,603,600).

32. The assessed value of the improvement component of this property, located at 14243 Hamilton Street, was \$113.62 per square foot for tax year 2002. The per square foot assessed value of this property is 47% of the assessed value of the improvement component of the subject property. This comparative level of assessment raises questions concerning equalization since the Hamilton Street property is of "better" quality of construction and significantly larger size (one-third larger than the subject property).
33. However, given that the Hamilton Street property differs significantly from the subject property in terms of age, size, style, quality of construction, and condition, that property is not truly comparable to the subject property.
34. The next largest home on the "Mansion List" is located at 9909 Fieldcrest Drive and has 18,488 square feet of above-grade finished living area. (E4:14). These improvements were built in 1972. There is no indication that any of the improvements have been remodeled. (E4:14). The "Physical" Condition of the improvements is "Good" and the "Quality of Construction" is "X+50" which is "Excellent." The home has seven bedrooms, nine full bathrooms and seven half-

bathrooms. (E4:14). The improvement component of this property has an assessed value of \$142.31 per square foot, or 59% of the assessed value of the improvement component of the subject property. (E5:19).

35. This property also differs from the subject property in terms of age, size, style, quality of construction, and condition. Given these differences, the property is not truly comparable to the subject property.
36. The "Mansion List" also includes a property located at 400 South 90th Street. (E4:7). The "PARC" screen (a part of the "old" Douglas County CAMA system showing the legal description and ownership) for this property appears as part of the record. (E4:7). The "PVAL" screen (another part of the "old" Douglas County CAMA system showing the history of assessed values for the property) shows that the land was vacant in 2000; that a partial value was established for the property in 2001; and that a full value was established for the property in 2002 ("YES" shown under "PART" or "Partial Value" for 2001 but not for 2002). (E4:8). The "PINQ" screen for this property has not been made a part of the record. The "PINQ" screen, a third component of the "old" Douglas County CAMA system, contains the details regarding the improvement component of real property including: year built, year remodeled, size of the improvements, physical

condition, quality of construction, number of bedrooms, number of bathrooms, etc. (See, e.g., the PINQ screen for the subject property in Exhibit 2, page 3.) This property has an assessed value of \$2,300,000 for the improvement component after Board action. The assessed value for the improvement component is \$111.97 per square foot, or 46.65% of the assessed value of the improvement component of the subject property. (E5:19). Neither Party adduced copies of the required information for this property. The Commission, from this record, cannot conclude that this property is comparable to the subject property.

V. ANALYSIS

This appeal presents issues identical to those decided in *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25 (1999). The subject property in this appeal, like that in the *Scribante* appeal, is located in the Fairacres Neighborhood of the City of Omaha. The issue presented in each appeal is whether the assessed value of the residential improvement component of the subject property is equalized with the assessed values of comparable properties.

The elements of proof and the burden of persuasion imposed on a complaining taxpayer in an equalization case are well-settled.

"Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive."

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

Judicial decisions concerning equalization appeals also require the Taxpayer to demonstrate by clear and convincing evidence (1) the actual or fair market value of the subject property; (2) the assessed value of the subject property; (3) the

actual or fair market value of the "comparable" properties; and (4) the level of assessment for those "comparable" properties. Once the Taxpayer has met this burden, the Taxpayer must demonstrate by clear and convincing evidence that the assessed value of his or her property is "grossly excessive." Finally, the Taxpayer must demonstrate by clear and convincing evidence that "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Taxpayer's right to relief, if he or she satisfies the burden imposed by law, is to have his or her assessment reduced to the percentage of that value at which others are taxed. *Kearney Convention Center, supra*.

The Commission's Order for Hearing in this matter provides that:

"In any real property case before the Commission, the County shall provide complete and legible copies of the Property Record File for the subject property . . . The County shall also provide copies of all information used to set the assessed value of the subject property for the tax year at issue."

(*Order for Hearing*, November 5, 2002, p. 3, ¶2.) The Board, in response to this Order, provided nothing in the way of documentation of the methodology used to determine the actual or fair market value the subject property.

The Taxpayer stipulated that the actual or fair market value of the improvement component of the subject property as of the assessment date was \$5,414,100. (E1:2). The equalized value of the improvement component as determined by the Board was \$4,148,200. (E1:2). The level of assessment of the subject property for tax year 2002 is therefore 76.62%.

A.
ACTUAL OR FAIR MARKET VALUE AND LEVEL OF
ASSESSMENT OF THE COMPARABLE PROPERTIES

Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2002) requires that all residential real property be valued at actual value. Those properties which are truly "comparable" to the subject property have assessed values which establish that the assessed values do not represent market value. The exact level of assessment cannot be determined from the evidence. The level of assessment, however, is substantially below 76.62% of market value, as shown below.

B.
EQUALIZATION OF ASSESSMENTS

1.
THE TAXPAYER'S EVIDENCE

The subject property consists of a tract of land legally described as "LT 25 & IRR N 81 FT LT 26 & -EX E 30 S 320 FT & IRR S 280 W 220 FT -" in the City of Omaha, Douglas County, Nebraska. (E1). The Board adduced evidence establishing that the tract of land is approximately 165,825 square feet in size (approximately 3.80 acres). (E2:3; E21:2). The tract of land is generally located north of 60th and Dodge Streets in the City of Omaha, Douglas County, Nebraska. The tract of land is located within an exclusive "Executive Neighborhood" known as "Fairacres."

The property is improved with a two-story, single-family residence which has 17,284 square feet of above-grade finished area. (E2:3). The residence has a pool, hot tub, a storage shed which has been modified to serve as a "pool house," a tennis court, and an attached garage. (E21:1). The improvements were built in 1935, and completely remodeled in 1995. (E2:3; E21:1). The Assessor's records indicate that the "Quality of Construction" for the improvement is "Excellent" (E21:1). The Assessor's records also indicate that the "Physical Condition" of the improvements is "Good" on one document (E2:3) and "Excellent" on another. (E21:1). The record contains no explanation for this discrepancy.

The "Condition" of residential improvements can have a significant impact on actual or fair market value. Under the Cost Approach, for example, "the best approach to the physical depreciation estimate is a combination of age and condition." *Marshall-Swift Residential Cost Handbook*, Marshall & Swift L.P., 9/2002, p. E-1. "Condition Rating Factors" typically consist of six categories: Excellent; Very Good; Good; Average; Fair; and Poor. *Id.*, at E-6. The "Excellent Condition Rating Indicator" establishes that "All items that can normally be repaired or refinished have recently been corrected, such as new roofing, paint, furnace overhaul, state-of-the-art components, etc. With no functional inadequacies of any consequence and all major short-lived components in like-new condition, the overall effective age has been substantially reduced upon complete revitalization of the structure regardless of the actual chronological age." *Supra*, at p. E-6. The "Very Good Condition Rating Indicator" requires that "All items well maintained, many having been overhauled and repairs as they've showed signs of wear, increasing the life expectancy and lowering the effective age with little deterioration or obsolescence evident with a high degree of utility." *Supra*, at p. E-6. The "Good Condition Rating Indicator" indicates "No obvious maintenance required but neither is everything new. Appearance and utility are above the standard, and the overall effective age will be lower than the

typical property." *Supra*, at p. E-6. "Condition" therefore plays a significant role in the valuation of residential real property.

The uncontroverted evidence establishes that the subject property was completely remodeled in 1995. The effective age of the property according to the Assessor's own records is "1995." (E21:1). The property therefore was effectively six years old as of the assessment date. By definition, if the "Effective Age" is six, the "Condition" cannot be "excellent."

The Taxpayer's evidence in this case, as in the *Scribante* appeal, consists of evidence concerning the assessed value of other single-family residential real properties which the Taxpayer contends are "comparable" to the subject. Judicial decisions in Nebraska have recognized that the assessed value of comparable properties may be used to demonstrate value or to establish a lack of equalization. *See, e.g., Scribante, supra, DeBruce Grain, Inc. v. Otoe County Board of Equalization*, 7 Neb.App. 688, 584 N.W.2d 837 (1998); *Cabela's, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). These decisions uniformly require, however, that the "comparable" properties be truly comparable to the subject property. The Taxpayer's evidence concerning similar properties must therefore be considered in light of the elements of comparability.

The Taxpayer in this appeal adduced evidence of properties located within the Fairacres Neighborhood of the City of Omaha and properties which are located outside of that neighborhood. "Comparable" properties share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 98. The Taxpayer's Appraiser prepared spreadsheets which are based on the Assessor's records for those "comparable" properties. (E5:1; E5:19). The Assessor's records contain a value for the land component for those "comparable" properties, a value for the improvement component, and a total value. (E1; E2; E3; E4).

It is important to isolate the value of the improvements from the value of the land component when utilizing "comparable" properties. "[T]he assessor must understand that location is the single most important factor in establishing property value. . . . two residences may be similar in size, age, quality, and other features, but one will have a lower value because of its proximity to some undesirable feature . . . The other residence may have a higher value because of its proximity to a lake or golf course." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 67 - 68. See, e.g., *Livingston v. Jefferson County Board of Equalization*, 10 Neb. App. 934, 640 N.W.2d 426 (2002). An

assessor, based on this principle, typically accounts for the impact of location on actual or fair market value in the value of the land component.

The Taxpayer's Appraiser relied on the Assessor's records concerning single-family residential properties in the Fairacres Subdivision as well as outside the subdivision. The Taxpayer's Appraiser specifically relied on the Assessor's records which contain a number, designated as "SQ FT LIVING AREA," which the Taxpayer's Appraiser construed as the "above-grade living area" for each property. (E2; E3; E4; E5). This assumption has a significant impact on the evidence presented. The cost of "above-grade living area" is usually substantially more than the cost of "finished basement" area. For example, the *Marshall-Swift Residential Cost Handbook* establishes that the base cost per square foot for a two-story, 3,200 square foot, masonry home of "Excellent Quality" of construction is \$113.76 for "face brick," while the per square foot cost for finished basement area is \$48.92 (Assuming 12-inch concrete walls with partitioned finish. Factors are provided for larger areas). (*Marshall-Swift Residential Cost Handbook*, Marshall & Swift, L.P., 6/2002, page Exc-11 and Exc-15).

Proper application of the Cost Approach under professionally accepted mass appraisal methodologies requires that the above-grade living area and the basement area be calculated separately

and then added together to determine Replacement Cost New. *Marshall-Swift Valuation Service*, Marshall & Swift, L.P., 12/2001, p. 6.

The Taxpayer's Appraiser, as noted above, utilized the Assessor's "SQ FT LIVING AREA" for the improvement component of the subject property, and divided the assessed value of the improvements contained in the Assessor's records by that amount of square feet, to yield an assessed value per square foot of improvement. This system of analysis follows professionally accepted mass appraisal methodologies. "Improved property can be valued using units of comparison. . . For residential properties, typical units of comparison are: dwelling unit; square foot of building; room; [or] bedroom." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 104.

The Taxpayer's Appraiser prepared a summary of his analysis of "comparable" properties within the Fairacres neighborhood. (E5:1; E5:19). The spreadsheet, however, does not address all of the elements of comparability described above. For the 2002 appeal, the Taxpayer's spreadsheet only lists the size of the living area and the assessed value of those improvements. The Taxpayer's spreadsheets summarizes fifteen properties located in Fairacres (E5:1) and twenty properties from the Douglas County "Manson" list (E5:19) based on this methodology.

The median per square foot value for the homes listed in the Fairacres Subdivision is \$125.43. The median size for this sample, however, is 5,068, or one-third that of the subject property. This evidence establishes that the subject property is assessed at nearly twice the median per square foot value of other homes in the Fairacres Subdivision. This evidence does not, however, establish that the other homes in the Fairacres Subdivision are comparable to the subject property.

The Board also adduced spreadsheets listing the assessed value of the improvements on a per square foot basis. (E20:5-7). This spreadsheet, however, contains other information including the year built, year remodeled, assessed value per square foot of improvements, and assessed value per square foot of land and improvements.

The Board's spreadsheet, however, reaches a different conclusion regarding the assessed value of improvements on a per square foot basis for tax year 2002. For example, Exhibit 20, page 3 indicates that the assessed value on a per square foot basis for the subject property is \$349.22. The spreadsheet indicates that the assessed value of the improvements for the subject property is \$5,414,054. (E23:2). The assessed value of the improvement component before Board action was \$5,414,100. (E1:2). Dividing the assessed value of the improvements (\$5,414,054) by the square footage of the above-grade finished

living area (17,284 square feet) equals \$313 per square foot. However, dividing the assessed value of the improvements after Board action (\$4,148,200) by the square foot of above-grade finished living area (17,284) equals \$240 per square foot as shown on Exhibit 5, page 19. The Board's evidence of per square foot value after Board action is \$276. (E23:2). The Board's evidence of per square foot assessed value of the subject property erroneously reports the assessed value per square foot both before and after Board action. If the Board's calculations include the value of the land component (which is not at issue), the Board's calculations would fail to take into account the impact of location. As such, those calculations would not reflect professionally accepted mass appraisal methodologies, since the properties on the "Douglas County Mansion List" are located across the City of Omaha, and not in a discrete neighborhood.

The Taxpayer also adduced evidence of residential real property designated by the Assessor as "Mansions" or "Preeminent Properties." (E5:19). The Douglas County Assessor's Office, for tax year 2002, created a new subclass of residential real property. The elements of this subclass are homes of more than 8,000 square feet of finished living area. (E20:5 - 7). There are twenty-one single-family residential properties on this list, including the subject property.

The data adduced by the Taxpayer for some of these properties is incomplete. The Taxpayer either did not provide the "PINQ" pages for these properties, or the "PINQ" pages contained no data, for the properties located at 705 North 162nd Street, 8725 Rainwood Road, and 400 South 90th Street. (E4:48-49; E4:1; and E4:7 - 8). In the absence of complete information, the Commission cannot conclude that those properties are truly comparable to the subject property. Therefore the information pertaining to those properties will not be considered.

The Taxpayer's Appraiser's spreadsheet (E5:19) lists "living areas" which are not supported by the Property Record File for certain properties. Those properties include the property located at Hundred Acre Woods (E4:38 shows 4,060 sq. ft.; E5:19 shows 13,394 sq. ft.; E23:1 shows 10,434 sq. ft.), the property located at 6600 Underwood Avenue (E4:55 shows 5,1821 sq. ft.; E5:19 shows 11,108 sq. ft.; E23:1 shows 9.108 sq. ft.), and the property located at 811 South 96th Street (E4:29 shows 7,906 sq. ft.; E5:19 shows 8,303 sq. ft.; E23:2 shows 8,303 sq. ft.). Nothing in the record explains the discrepancies in reported size, and therefore the information pertaining to those properties will not be considered.

The Board adduced evidence establishing that the property located at 14243 Hamilton is part of a condominium. Exhibit 4, page 15, corroborates that information, and indicates that the

portion of the property listed is 80% of the total property. That property, for which complete information has not been provided, will not be considered.

Finally, the properties which were built before 1990, and properties which were completely remodeled before 1990 or after 2000 have not been considered.

The remaining properties range in size from 9,533 square feet for the property located at 6610 Davenport Street (E4:45 - 47) to the property located at 9909 Fieldcrest at 18,488 square feet.

Some of the properties, however, differ in "Quality of Construction" from the subject property. The subject property has a "Quality of Construction" of "x+25." (E2:3). The property at 112 South 92nd Circle has a "Quality of Construction" factor of "X+10." (E4:6). The property located at 9960 Bloomfield also has a "Quality of Construction" factor of "X+10." (E4:52). Finally, the property located at 6610 Davenport has a "Quality of Construction" factor of "Average" at "A+30." (E4:58). Removing those properties from the array due to differences in "Quality of Construction" factors for the remaining properties results in the following, where the properties are arrayed by size:

ADDRESS	Blt/Re	SQ.FT.	Quality	VALUE	RATE/SF
Subject	1995	17,284	X+25	\$4,148,299	\$240.00
1215 N. 136 th	1997	12,459	X+25	\$2,089,200	\$167.69
1446 N. 142 nd	1998	13,431	X+25	\$2,640,200	\$196.58
13421 Hamilton	1998	13,669	X+25	\$1,939,000	\$141.85

This table of comparable properties establishes that the subject property is the largest in size. It is the oldest. And yet it has the highest per square foot assessed value of any of the properties shown.

The data contained in this table violates the fundamental principle of "economies of scale." The principle is summarized in *The Appraisal of Real Property*, 12th Ed., The Appraisal Institute, 2001, at page 425:

"It may sometimes be necessary to adjust for differences in economies of scale. Even if all other property characteristics appear similar, a sale property that is substantially larger or smaller than the subject property may not be a particularly meaningful comparable because the per unit price of the larger property may be lowered by economies of scale."

Neither Party offered any evidence of the adjustment necessary to account for the differences in size. Those differences do exist. The *Marshall-Swift Residential Cost Handbook* is a cost manual recognized in the regulations promulgated by the Property Tax

Administrator. 350, *Neb. Admin. Code, Ch. 10, §003.04. (2001).*

The *Handbook* estimates Replacement Cost New based on per square foot construction costs. Those costs are segregated based on the "Quality of Construction." For a construction grade of "Excellent," the per square foot costs are further segregated based on the size of the improvements, and decrease, on a per square foot basis, for every additional 200 square feet in the area of the above-grade living area. *Marshall-Swift Residential Cost Handbook*, Marshall-Swift, L.P., 2000, p. Exc-8.

The *Handbook* estimates, for example, that in June of 2000 the base cost ("Replacement Cost New") for a two-story, 1,600 square foot home of "Excellent" Quality of Construction, and masonry construction was \$133.29 per square foot. The base cost for the same type of home which is 6,000 square feet in size is \$100.56 per square foot, a difference of \$33.29 per square foot. This cost is 25% less than the cost for the same quality home which is one-sixth the size. The principle of "economies of scale" is not correctly reflected in the Board's per square foot assessed value of the improvements. The assessed value per square foot of the subject property's improvements far exceeds that of substantially smaller properties, for reasons which are not adequately explained in the record.

The per square foot assessed value of the subject property exceeds that of comparable properties which are newer than the subject property. Nothing in the record explains this anomaly.

2.
THE BOARD'S EVIDENCE

The Board's evidence consisted primarily of documents received as Exhibits 20 through 27.

The "Appraisal Report" found at Exhibit 20 purports to contain a "Sales Comparison Approach." Neb. Rev. Stat. §77-112 (Cum. Supp. 2002) provides "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; (2) income approach; and (3) cost approach." This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes. *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

Professionally accepted mass appraisal methods define the Sales Comparison approach as follows:

"The sales comparison approach uses the market to estimate value by comparing the subject to similar

properties that have recently sold. When comparing the sold properties to the subject being appraised, the assessor must consider similarities and differences that affect value. Financing terms, market conditions, location and physical characteristics that must be considered when making adjustments to the sales prices of the comparable properties for their differences from the subject. . . The basic steps in the sales comparison approach are (1) defining the appraisal problem, (2) collecting and analyzing the data, (3) selecting appropriate units of comparison, (4) making reasonable adjustments based on the market, (5) applying the data to the subject of appraisal."

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 97.

Exhibit 20, page 3, lists three properties offered as "comparables" for the subject property.

"Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition."

Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.

The three properties offered as "comparables" range in age from three years to sixty-six years. The styles range from 2½-

story to ranch-style homes. The size of the improvements range from 3,988 square feet to 6,329 square feet. The number of bedrooms range from two to six, and the number of bathrooms from four to eight.

When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2nd Ed.*, 1996, p.103. That recognition takes the form of "adjustments." These adjustments represent the market value of the feature. *Property Assessment Valuation, 2nd Ed.*, 1996, p.105.

The document offered by the Board in Exhibit 20 at page 3 fails to make any adjustments for style, age, size, amenities, functional utility, or physical condition.

The evidence contained in Exhibit 20 fails to comply with professionally accepted "fee" or professionally accepted mass appraisal methodologies. The properties offered as "comparables" are not truly comparable to the subject property. And, the evidence contained in the Exhibit is not credible evidence of the actual or fair market value of the subject property.

Exhibit 21 is a four-page "Improvement Inventory Worksheet" for the subject property. Page one of this Exhibit contains an inventory of physical characteristics of the improvements for the subject property. This exhibit repeats the information contained

in the "PINQ" screen (E2:3), although in a far more legible and understandable format.

Page two of this exhibit is labeled "Land Sales, Value, and Permit Worksheet for ACCT# R1028670000." The only information contained on this page is a summary of the legal description, and a block of information headed "Account Value." The information recited in this part of the page lists the Total Land Value (\$621,844), the "Total Cost Value" (\$6,035,898), the "Total Market Value" (\$4,078,344), the "Total Reconciled Value" (\$4,770,044) and the "Total Actual Value" (\$4,770,044). (E21:2). The "Approach on this Account" is labeled "Board." The document does not contain any evidence of the valuation methodology used to value the subject property for tax year 2002. The document does not contain any data underlying the valuation methodology which was used. Finally, the document does not contain any explanation concerning the method of reconciliation of values. Page three of the document lists Sales Information for the subject property. Page four contains a sketch of the improvements, with total square footage for some of the improvements shown at the bottom of the page. However, the totals for the columns have been omitted, so the information shown cannot even be used to corroborate the square foot totals on the "PINQ" screen.

The Board also adduced Exhibit 22, a one-page document listing the history of assessed values of the subject property. The Board objected to the Commission's receipt of Exhibits 10, 11, 12, and 13, based on relevance. The prior years' assessments are not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). The Board's objections to the receipt of Exhibits 10, 11, 12, and 13 were sustained. However, nothing in the record explains the significance of Exhibit 22.

Exhibit 23 is a spreadsheet containing a list of the "Mansions" or "Preeminent" properties in Douglas County. However, the information lists the per square foot assessed value for each of the properties using both land and improvements. Use of this information, without the necessary adjustments to compensate for differences in size of the lots and differences in location, is not a professionally accepted mass appraisal methodology.

Exhibit 25 is a one-page document listing the change in the level of assessed value between 2001 and 2002. There is no explanation in the record of the significance of this information, which under *DeVore*, supra, appears to have no relevance to tax year 2002.

The Board also adduced Exhibits 26 and 27, which are the "Improvement Inventory Worksheets" for the properties on the "Mansion List." These documents are also problematic.

Exhibit 26, pages 4 through 6, concern the property located at 6600 Underwood Avenue. This property is similar in condition and quality to the subject property (both "Excellent") and was built in 1939. The improvements were remodeled in 2001. The residence has 9,108 square feet of above grade living area, and 2,000 square feet of finished basement. The sketch showing the dimensions of this property however, were not provided by the Board. The "Account Values" summary for this property shows that the "Total Cost Approach Value" was \$2,040,743; the "Total Market Value" was \$1,880,004; and the "Total Actual Value" was \$2,040,754. (E26:5). The "Total Actual Value" for the subject property was the assessed value. (E26:2). The "Total Cost Value" and the "Total Actual Value" are identical. This property was valued using the Cost Approach. However, no Cost Approach Worksheet was made a part of the record. No adjustments are shown to account for the differences between this property and the subject property. Given the substantial difference in size between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

Exhibit 26, pages 7 through 9 concern property located at 6300 Dodge Street. The property has 9,787 square feet of above-grade finished living area, 3,714 square feet of unfinished basement, was built in 1920, and remodeled in 1984. (E26:7). The "Total Cost Value" for this property is shown as \$2,147,135. The "Total Market Value" for this property is shown as \$1,491,110. The "Total Actual Value" for this property was \$1,650,010. (E26:8). Unlike the property found at Exhibit 26, page 5, this property was clearly not valued using the Cost Approach. Nothing in the record explains how the values for this property were determined or reconciled. Given the substantial difference in the size between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

Exhibit 26, pages ten through twelve, concerns a property located at 6610 Davenport Street. The property has 9,599 square feet of above-grade finished living area, 2,738 square feet of unfinished basement, and 800 square feet of finished basement area. (E26:10). The house was built in 1941, and remodeled in 1994. The house has an effective age of 36 years, while the subject has an effective age of six years. (E26:1). Again, the property sketch page was omitted from this document. The "Total Cost Value" for this property is shown as \$1,987,768. The "Total Market Value" for this property is shown as \$1,898,456. The

"Total Actual Value" of this property is \$1,987,768. (E26:11). The "Total Cost Value" and the "Total Actual Value" are identical. This property was apparently valued using the Cost Approach. Nothing in record explains why some of the Board's "comparables" were valued using the Cost Approach, while others were valued using some other approach. Given the substantial difference in the size between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

Exhibit 27, pages one through three, concerns a property located at 6614 Underwood Avenue. The improvements were built in 1936, and remodeled in 1998. No effective age is listed. The Quality of Construction is listed as "Very Good," unlike the subject property, which is shown as "Excellent." (E26:1). There are 6,329 square feet of finished above-grade living area, with 800 square feet of "minimal finish." (E27:1). The property was last appraised in 1999, while the subject property was appraised in 2002. (E26:1). This property was sold for \$1,800,000 in 1999. (E27:3). The assessed value of this property (again assuming that "Total Actual Value" is the assessed value) is \$1,758,820. (E27:2). No "Total Cost Value" is shown for this property. From this record the Board appears to be contending that the actual or fair market value of preeminent properties is decreasing rather than increasing. Given the substantial

differences in the size and the difference in quality of construction between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

Exhibit 27, pages four through six concerns a property located at 1446 North 142nd Circle. (E27:4). The property was built in 1999, and has an age of two years. No effective age is listed. The property has a total of 10,053 square feet of above-grade finished living area. (E27:4). The house is a two-story home with a walk-out basement. (E27:4). The walk-out basement has an additional 4,249 square feet of finished living area. (E27:4). This property, again assuming that "Total Actual Value" equals assessed value, has an assessed value of \$2,940,169, although the "Total Market Value" is only \$1,833,400. (E27:5). The property sold on March 26, 2001, for \$3,535,000. (E27:6). The assessed value is 83% of the selling price, and is 160% of "Total Market Value." The significance of this information does not appear in the record. Given the substantial differences in the size between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

Exhibit 27, pages seven through nine, concerns a property located at 1304 North 139th Street. (E27:7). The property is a ranch-style home, with 3,988 square feet of above-grade finished

living area. The basement, shown as 4,078 square feet, which is larger than the main floor. (E27:7). This is indicative of either an unusual floor plan or an error in measurement. This basement is a walk-out basement with 2,750 square feet of finished living area. (E27:7). The house was built in 1997, and has a "Total Cost Value" of \$1,064,966 and a "Total Market Value" of \$1,358,300. (E27: 7 - 8). The "Total Actual Value," presumably the assessed value, is \$1,358,300. (E27:8). The property sold on December 27, 2001 for \$1,450,000, and is assessed at 94% of the selling price. Again, the significance of this information does not appear in the record. Given the substantial differences in the size and style between this property and the subject property, the record does not establish that this property is truly comparable to the subject property.

The Board's evidence also includes Exhibit 24. This document establishes that the Board utilized a referee for tax year 2002. This referee determined that the properties at 9800 Harney Parkway and at 3217 South 101st Street were "considered good comparisons of value." The referee utilized a figure of \$240 per square foot for the improvements and multiplied that number by 17,284. (E24:2). The resulting figure, \$4,148,160, was added to the value of the land component, \$621,800, to yield a value of \$4,769,960. (E24:2). That figure was rounded by the Board to \$4,770,000. (E24:1). This Exhibit contains the only

evidence of the methodology used by the Board to determine the value of the subject property for tax year 2002.

The Board did not adduce the Property Record File, in either the "new" CAMA format or the "old" CAMA (the PARC, PINQ, or PVAL screens) format for the property located at 9800 Harney Parkway. The Taxpayer's evidence did include the Property Record File in the "old" format for this property. (E4:9 - 11). The improvements to this property were built in 1983. (E4:11). The "Quality of Construction" is "X+50," which is better than that of the subject property at "X+25." The "Physical Condition" is "Good," as is that of the subject property. No basement, finished or otherwise, is shown for this property. No amenities (i.e., pool, pool house, patio, or tennis court) appear in the record. No "LAST INSPECTION DATE" is shown for this property. (E4:11). [The "LAST INSPECTION DATE" for the subject property is shown as 11/20/99. (E2:30.)]

The Assessor's record indicates that this property at 9800 Harney Parkway property is a two-story home, with 15,899 square feet of above-grade living area. (E4:11). The "GROUND FL. AREA" for this property is shown as 5,297 square feet. Assuming without deciding that the second floor area is at most the same size as the first floor (see photo at Exhibit 5, page 37), the maximum size of the property would be 10,594 square feet. (5,297 sq. ft. "GROUND FL. AREA" x 2 stories = 10,594.) Nothing in the

record explains the difference between the 10,594 square feet of above-grade finished living area which is indicated by the record and the 15,899 square feet shown. Without an inspection of this property, and a verification of the size of the improvements, the property cannot be considered as a comparable for the subject property.

The Referee also utilized property located at 3217 South 101st Street. Again, the Board failed to adduce the Property Record File for this property. The Taxpayer did not offer this property as a comparable. There is, therefore, no evidence concerning the style, age, size, amenities, functional utility, or physical condition for this property. The Commission, from this record, cannot conclude that this property is truly comparable to the subject property.

C.
SUMMARY OF EVIDENCE PRESENTED

The per square foot assessed value of the improvements on the subject property for tax year 2002 is \$240.00 per square foot, which is \$43.42 per square foot higher than the next highest per square foot assessed value of a newer home of similar quality within the same class (i.e., the Mansions or "Preeminent Properties" listed in Exhibit 39 from Case No. 00R-89). The Board adduced no evidence explaining the significant differences

in assessed value of improvements between the subject property and the "comparable" properties.

The subject property, which has significantly higher per square foot assessed value than any of the truly comparable properties shown in the table on page 32 of these Findings and Orders, is valued at 76.62% of actual or fair market value. The only possible conclusions that can be drawn from this record are (1) that the other comparable properties in the same class as the subject property are grossly under assessed; or (2) that the other comparable properties have a significantly lower actual or fair market value. The only conclusion supported by the record is that the other comparable properties are grossly under assessed.

The courts have defined "equalization" and the remedy for a violation of the constitutional mandate of uniform and proportionate assessments. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. Where it is impossible to secure both the standards of the true value of a property for taxation and the uniformity and equality required by law, the

latter requirement is to be preferred as the just and ultimate purpose of the law. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

That relief is also specified by judicial mandate. "Where the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied" the Taxpayer's right to relief is clear. The right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment *reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute*. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984) (Emphasis added).

D. CONCLUSION

The evidence before the Commission establishes that newer, "comparable" properties are assessed at between \$141.85 and

\$196.58 per square foot. The Taxpayer requested on his protest that the assessed value of the improvements to his property be equalized at \$3,024,700. (E24:1). This would equate to a per square foot value of \$175.00. Although the law allows equalization with the lowest level of assessment, the Taxpayer has requested an assessed value of which is 23% higher than the lowest value. The requested value, \$175 per square foot, falls within the range set by the comparable properties (\$141.85 and \$196.58). Given this record, the equalized value of the subject property for tax year 2002 is \$3,024,700. (17,284 square feet x \$175.00 = \$3,024,700). \$3,024,700 for improvements plus the value of land component as determined by Board (\$621,800) = \$3,646,500.

The Commission, from the entire record before it, finds and determines that the decision of the Board was incorrect, unreasonable and arbitrary. The final value as determined by the Board is also unreasonable. The decision of the Board must be vacated and reversed, and the value of the improvement component of the subject property equalized for tax year 2002 as set forth above.

**VI.
CONCLUSIONS OF LAW**

**A.
JURISDICTION**

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Cum. Supp. 2002).

**B.
SUBSTANTIVE CONCLUSIONS OF LAW**

The Commission has jurisdiction over the parties and the subject matter of this appeal.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Douglas County Board of Equalization which granted Taxpayer's protest only in part is vacated and reversed.
2. That Taxpayer's residential real property commonly known as 412 North Elmwood Road, in the City of Omaha, Douglas County, Nebraska, shall be valued as follows for tax year 2002:

Land	\$ 621,800
Improvements	\$3,024,700
Total	\$3,646,500

3. That any request for relief by any Party not specifically granted by this order is denied.
4. That this decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2002, as amended by 2003 Neb. Laws, L.B. 291, §9).
5. That this decision shall only be applicable to tax year 2002.
6. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 7th day of August, 2003.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Wm. R. Wickersham, Vice-Chair

Seal

Mark P. Reynolds, Chair