

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

ELN, LLC,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee

Case Nos: 11C-231, 11R-142, 11R-143,  
11R-145, 11R-146, 11R-147, 11R-149,  
11R-150, 11R-151, 11R-152, 11R-153,  
11R-156, 11R-157, 11R-158, 11R-159,  
11R-161, 11R-162, 11R-163, 11R-164,  
11R-165, 11R-166, 11R-168, 11R-169,  
11R-170, 11R-171, 11R-172, 11R-173,  
11R-174, 11R-175, 11R-176, 11R-177,  
11R-179, 11R-180, 11R-181, 11R-182,  
11R-184, 11R-185, 11R-186, 11R-187,  
11R-188, 11R-189, 11R-191, 11R-192,  
11R-193, 11R-194, 11R-195, 11R-196,  
11R-197, 11R-198, 11R-199, 11R-200,  
11R-201, 11R-202, 11R-203, 11R-204,  
11R-205, 11R-206, 11R-207, & 11R-208

Order Reversing the Determination of the  
Board of Equalization in 11C-231 and  
Affirming the Determinations of the  
County Board of Equalization  
in all other Appeals

**For the Appellant:**

Jack W. Besse,  
Knapp, Fangmeyer, Aschwege,  
Besse & March, P.C.

**For the Appellee:**

Andrew Hoffmeister,  
Deputy Buffalo County Attorney

Heard before Commissioners Hotz and Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property in Case No. 11C-231 is a 60.4 acre commercial parcel located in Buffalo County, Nebraska, improved with 383 residential mobile home lots. The Subject Properties in 11R-142 to 11R-143, 11R-145 to 11R-147, 11R-149 to 11R-153, 11R156 to 11R-159, 11R161 to 11R-166, 11R-168 to 11R-177, 11R-179 to 11R-182, 11R-184 to 11R-189, and 11R-191 to 11R-208 are 58 mobile homes of various sizes located on 58 of the 383 mobile home

lots. The legal descriptions of the Subject Properties for the appeals are found in the property record cards.<sup>1</sup>

## II. PROCEDURAL HISTORY

The following table indicates the assessed value of the subject property for tax year 2011 as determined by the Buffalo County Assessor, the assessed valuation requested by ELN, LLC (Taxpayer) when it protested this assessment to the Buffalo County Board of Equalization (County Board), and the assessed value for tax year 2011 as determined by the County Board:

Case No.	Assessed Value	Protested Value	Board Value	Exhibit
11C-231	\$4,016,480	\$3,412,525	\$4,016,480	70:9
11R-142	\$43,175	\$20,000	\$43,175	78:2
11R-143	\$25,695	\$7,800	\$25,695	79:2
11R-145	\$36,060	\$14,645	\$22,055	80:2
11R-146	\$41,680	\$12,500	\$28,820	81:2
11R-147	\$26,260	\$12,500	\$26,260	82:2
11R-149	\$61,640	\$20,000	\$35,000	83:2
11R-150	\$26,355	\$12,500	\$26,355	84:2
11R-151	\$43,710	\$20,000	\$43,710	85:2
11R-152	\$55,385	\$16,000	\$28,445	86:2
11R-153	\$27,060	\$12,500	\$27,060	87:2
11R-156	\$25,895	\$12,500	\$25,895	90:2
11R-157	\$26,090	\$12,500	\$26,090	91:2

<sup>1</sup> 11C-231, E70:2; 11R-142, E78:4; 11R-143, E79:4; 11R-145, E80:4; 11R-146, E81:4; 11R-147, E82:4; 11R-149, E83:4; 11R-150, E84:4; 11R-151, E85:4; 11R-152, E86:4; 11R-153, E87:4; 11R-156, E90:4; 11R-157, E91:4; 11R-158, E92:4; 11R-159, E93:4; 11R-161, E94:4; 11R-162, E95:4; 11R-163, E96:4; 11R-164, E97:4; 11R-165, E98:4; 11R-166, E99:4; 11R-168, E100:4; 11R-169, E101:4; 11R-170, E102:4; 11R-171, E103:4; 11R-172, E104:4; 11R-173, E105:4; 11R-174, E106:4; 11R-175, E107:4; 11R-176, E108:4; 11R-177, E109:4; 11R-179, E111:4; 11R-180, E112:4; 11R-181, E113:4; 11R-182, E114:4; 11R-184, E116:4; 11R-185, E117:4; 11R-186, E118:4; 11R-187, E119:4; 11R-188, E120:4; 11R-189, E121:4; 11R-191, E122:4; 11R-192, E123:4; 11R-193, E124:4; 11R-194, E125:4; 11R-195, E126:4; 11R-196, E127:4; 11R-197, E128:4; 11R-198, E129:4; 11R-199, E130:4; 11R-200, E131:4; 11R-201, E132:4; 11R-202, E133:4; 11R-203, E134:4; 11R-204, E135:4; 11R-205, E136:4; 11R-206, E137:4; 11R-207, E138:4; 11R-208, E139:4.

<b>Case No.</b>	<b>Assessed Value</b>	<b>Protested Value</b>	<b>Board Value</b>	<b>Exhibit</b>
11R-158	\$48,545	\$16,000	\$27,860	92:2
11R-159	\$42,865	\$20,000	\$42,865	93:2
11R-161	\$29,455	\$5,000	\$29,455	94:2
11R-162	\$44,625	\$12,500	\$24,485	95:2
11R-163	\$52,335	\$16,000	\$27,500	96:2
11R-164	\$43,075	\$20,000	\$43,075	97:2
11R-165	\$43,230	\$20,000	\$43,230	98:2
11R-166	\$67,990	\$20,000	\$47,270	99:2
11R-168	\$21,540	\$16,000	\$21,540	100:2
11R-169	\$42,835	\$20,000	\$42,835	101:2
11R-170	\$42,865	\$20,000	\$42,865	102:2
11R-171	\$41,100	\$12,500	\$28,420	103:2
11R-172	\$26,380	\$12,500	\$26,380	104:2
11R-173	\$42,885	\$20,000	\$42,885	105:2
11R-174	\$42,615	\$20,000	\$42,615	106:2
11R-175	\$41,520	\$12,500	\$28,710	107:2
11R-176	\$49,055	\$16,000	\$27,565	108:2
11R-177	\$26,010	\$12,500	\$26,010	109:2
11R-179	\$43,320	\$20,000	\$43,320	111:2
11R-180	\$24,225	\$16,000	\$24,225	112:2
11R-181	\$56,070	\$16,000	\$27,925	113:2
11R-182	\$41,400	\$12,500	\$28,630	114:2
11R-184	\$26,165	\$12,500	\$26,165	116:2
11R-185	\$22,975	\$5,000	\$22,975	117:2
11R-186	\$26,000	\$12,500	\$26,000	118:2
11R-187	\$26,955	\$8,000	\$19,210	119:2
11R-188	\$26,235	\$12,500	\$26,235	120:2
11R-189	\$26,235	\$12,500	\$26,235	121:2
11R-191	\$24,750	\$6,000	\$24,750	122:2

<b>Case No.</b>	<b>Assessed Value</b>	<b>Protested Value</b>	<b>Board Value</b>	<b>Exhibit</b>
11R-192	\$41,645	\$12,500	\$28,795	123:2
11R-193	\$41,645	\$12,500	\$28,795	124:2
11R-194	\$42,935	\$20,000	\$42,935	125:2
11R-195	\$42,865	\$20,000	\$42,865	126:2
11R-196	\$21,325	\$5,000	\$16,660	127:2
11R-197	\$39,030	\$8,000	\$45,000	128:2
11R-198	\$21,485	\$14,000	\$21,485	129:2
11R-199	\$41,645	\$12,500	\$28,795	130:2
11R-200	\$42,865	\$20,000	\$42,865	131:2
11R-201	\$24,565	\$14,000	\$24,565	132:2
11R-202	\$25,650	\$16,000	\$25,650	133:2
11R-203	\$51,850	\$14,000	\$28,340	134:2
11R-204	\$41,645	\$12,500	\$28,795	135:2
11R-205	\$39,030	\$11,500	\$39,030	136:2
11R-206	\$22,630	\$16,000	\$22,630	137:2
11R-207	\$51,290	\$14,000	\$28,050	138:2
11R-208	\$52,950	\$16,000	\$27,255	139:2

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 210 exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of all of the exchanged exhibits. The Commission held a consolidated hearing of all of the appeals on March 19, 2012.<sup>2</sup>

### **III. STANDARD OF REVIEW**

When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in

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<sup>2</sup> These 59 appeals were also consolidated for hearing with 10 related appeals in Case Nos: 11R-141, 11R-144, 11R-148, 11R-154, 11R-155, 11R-160, 11R-167, 11R-178, 11R-183, and 11R-190.

making an assessment and has acted upon sufficient competent evidence to justify its action.”

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

(Citations omitted).

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.

*Id.* 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. 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) . The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

## IV. VALUATION

### A. Law

Under Nebraska law,

[a]ctual 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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). "Actual value, market value, and fair market value mean exactly the same thing." *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in Nebraska subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

The term real property means:

- (1) All land;
- (2) All buildings, improvements, and fixtures, except trade fixtures;
- (3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and
- (5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Neb. Rev. Stat. §77-103 (Reissue 2009).

Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But 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.

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

It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.

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

## **B. Summary of the Evidence**

### **1. 60.4 Acre Mobile Home Park, 11C-231**

The Taxpayer purchased the 60.4 acre parcel on February 13, 2007, for \$3,550,000. E70:2. The parcel is improved with a 336 square foot office building and a 192 square foot shed. E70:4, 70:6-7. Both parties offered testimony that the parcel was also improved with utility hookups, paving, and lighting to accommodate 383 mobile home lots, as well as a common area.<sup>3</sup> The mobile homes placed on the lots were valued separately, as discussed below.

Robert Spencer testified on behalf of the Taxpayer. Spencer stated that he was a Member of ELN, LLC, and was the property manager of the subject property. Spencer testified that at the time the Taxpayer purchased the subject property in 2007, 68 lots were vacant, several more were empty or abandoned, and that the mobile home park was generally in disrepair. He stated that since the purchase, the Taxpayer had not made changes to infrastructure, but that efforts had been focused on maintenance of the property. Spencer testified that as of January 1, 2011, all

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<sup>3</sup> An aerial photograph of the subject property is found at Exhibit 70:12.

383 lots were occupied with mobile homes and that the lot rental rate was \$240, or \$230 if a tenant signed a new lease for one year or longer.

Scott Anderson, an employee with the Buffalo County Assessor's office (Assessor) testified on behalf of the County Board. Anderson testified that the Assessor assessed the parcel using both the cost approach and the income approach. E70:4.

**a. Cost Approach**

The cost approach includes six steps:

(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.

*Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010), at 230. The Assessor first determined the contribution to value of the land component to be \$766,000. E70:4. Each of the 60.4 acres was valued at \$12,682.12 per acre (60.4 x \$12,682.12). E70:4. The Assessor then determined that the replacement cost new of the improvements was \$3,859,486, based upon cost tables provided by Marshall & Swift. E70:4. Even though first improved in 1970, less than 1% (\$6,476) was discounted for physical and functional depreciation. E70:4.<sup>4</sup> Therefore, replacement cost new less physical and functional depreciation was \$3,853,010. E70:4.

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<sup>4</sup> "Depreciation is loss in value due to any cause. It is the difference between the market value of a structural improvement or piece of equipment and its reproduction or replacement cost as of the date of valuation. Depreciation is divided into three general categories, physical, functional, and external." *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2010) at E-1. "Physical depreciation is loss in value due to physical deterioration." *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2010) at E-1. "Functional or technical obsolescence is loss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus a new structure

The Assessor also made a reduction of 15% (\$577,950) for economic depreciation. E70:4.<sup>5</sup> Economic depreciation was subtracted from replacement cost new less physical and functional depreciation (\$3,853,010 - \$577,950). E70:4.<sup>6</sup> The total replacement cost new less depreciation for the improvements was \$3,275,060. E70:4. Therefore, the cost approach value as determined by the Assessor was \$4,041,060 for land and improvements (not including the value of mobile homes) (\$766,000 + \$3,275,060).

On cross examination, Anderson was unable to explain why the physical and functional depreciation was less than one percent when the improvements had a chronological age of more than 40 years. This would appear to be tantamount to a determination that the effective age of the subject property was less than one year.<sup>7</sup> Spencer's testimony that the Taxpayer, since assuming ownership in 2007, had focused on maintenance of the improvements, and that all 383 lots were occupied with mobile homes does not clarify this point. Moreover, the Taxpayer offered no evidence that would quantify any reductions for physical or functional depreciation for the subject property.

The Taxpayer also asserted and offered the testimony of Spencer that the subject property experienced significant economic obsolescence due to its proximity to the railroad tracks and the grain elevator. However, no evidence was offered to quantify any loss in value due to these external influences.

Despite the fact that the relatively low reductions for physical and functional depreciation are unexplained, there is not sufficient evidence to find that the County Board's reliance upon the Assessor's cost approach in its determination of value of the subject property was arbitrary or unreasonable.

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or piece of equipment may suffer obsolescence when built." *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2010) at E-1.

<sup>5</sup> "External, locational or economic obsolescence is loss in value due to causes outside the property and independent of it, and is not included in the tables." *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2010) at E-1.

<sup>6</sup> See Exhibit 5 above.

<sup>7</sup> Effective age is "[t]he age of property that is based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age." *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.93, (2002).

## **b. Income Approach**

Anderson testified that the Assessor also considered the income approach to value when determining the assessed value of the subject property. E70:4. The Income Approach can be defined as:

a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.

*The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). The direct capitalization method produces an indication of value based on a single year's estimated income. See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2001, at 465.

The Assessor's income approach worksheet appears to be a direct capitalization analysis indicating an estimated value of \$4,084,173. E70:16. The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2008, 466. "Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 318.

Anderson testified that typical rent for a mobile home lot in the market area was \$250 per month. This monthly potential rent amount was annualized to \$3,000 and then multiplied by the number of rent-producing lots to arrive at a gross income of \$1,149,000 ( $\$3,000 \times 383$ ). E70:16. The Assessor then deducted 15% for estimated vacancy and collection losses to arrive at an effective gross income of \$976,650 ( $\$1,149,000 - (\$1,149,000 \times .15)$ ). E70:16. The Assessor next estimated reasonable and typical expenses to be 54% of gross income to arrive at a net operating income of \$449,259 ( $\$976,650 - (\$976,650 \times .54)$ ). E70:16. Last, the Assessor estimated the capitalization rate of 11% after analyzing sales of similar properties in Nebraska

and neighboring states. The application of an 11% capitalization rate resulted in an indicated income approach value of \$4,084,173 (\$449,259 / .11). E70:16.

Spencer testified that actual lot rentals at the time of January 1, 2011, were \$230 or \$240. Anderson testified that mobile home lot rentals for a comparable property adjacent to the subject property were \$250, and that typical mobile home lot rentals in the market area were determined to be \$250, even though actual rentals at the subject property were \$10 to \$20 less. Other than its own actual rental rates, the Taxpayer offered no evidence that potential mobile home lot rentals in the market area were limited to \$230 to \$240 per month. Regarding vacancy rates, Spencer testified that as of January 1, 2011, all 383 lots were occupied by rent-paying tenants (the Assessor had allowed a 15% estimated vacancy and collection loss rate which, if calculated at zero, would have resulted in a higher overall value estimate of the property). The Taxpayer did not offer evidence to dispute the Assessor's estimates of expense or capitalization rates.

### **c. Final Value Reconciliation of Cost Approach and Income Approach**

When reaching a final value estimation, the Assessor reconciled the cost approach estimation of value (\$4,041,060) with the income approach estimation of value (\$4,084,170) and determined taxable value to be \$4,016,480. E70:4. No explanation was offered why this reconciliation resulted in a value which was less than both the values resulting from the cost approach and the income approach. The Commission finds there is not sufficient evidence to find that the County Board's determination of value of the subject property, relying upon the Assessor's reconciliation of the cost approach and the income approach was arbitrary or unreasonable.

## **2. Mobile Homes**

The Taxpayer has filed 58 appeals of the County Board's determinations of value of mobile homes owned by the Taxpayer on 58 of the 383 lots. In eight of the 58 appeals, the Taxpayer offered a Bill of Sale as evidence of market value of the mobile home.<sup>8</sup> In each of these appeals, the mobile home was at least 11 years old (pre-2000) and had been purchased by the Taxpayer as evidenced in the Bill of Sale. Six of the mobile homes were purchased by the

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<sup>8</sup> 11R-143, E150:6; 11R-161, E165:6; 11R-185, E188:6; 11R-187, E190:6; 11R-191, E193:6; 11R-196, E198:12; 11R-197, E199:6; 11R-205, E207:6.

Taxpayer in 2010. The mobile home in Case #11R187 was purchased March 3, 2008. E190:6. The mobile home in Case #11R196 was purchased March 4, 2009. E198:12.

Spencer testified that the Taxpayer incurred freight costs whenever moving a mobile home to the subject property or from one lot to another at the subject property. He stated that minimum freight costs were \$500 to \$600, with an additional per mileage charge. Spencer was unable to recite and there was no other evidence of precise mileage rates.<sup>9</sup> When locating a mobile home on one of the lots of the subject property, Spencer testified that the Taxpayer also incurred certain costs in order to make the mobile home livable. These costs included labor and materials for skirting and strapping and for front and back wooden decks with steps and rails, and for utility hookups. Spencer testified that regardless the size of the mobile home these costs were approximately \$2,885 per mobile home. Spencer further testified that when the Taxpayer purchased a mobile home, a maximum of \$2,000 was invested in making improvements, repairs, or maintenance to the home before offering it for rent. Therefore, the Taxpayer incurred a minimum of \$3,385 in costs before offering these eight mobile homes for rent at the subject property.

Spencer testified that when tenants rented both a mobile home and a lot, they made only one monthly rental payment, wherein the lot rental rate was combined with the rental rate for the mobile home. Rental rates as of January 1, 2011, were \$495, \$595, or \$615, depending upon the dimensions of the mobile home. According to Spencer, many tenants signed multi-year leases extending for as long as 150 months. Spencer also testified that it was the Taxpayer's business plan to enter into rental agreements involving mobile homes that were owner-occupied, and where the tenants agreed not to move the mobile home upon the termination of the lot lease. Spencer testified that the Taxpayer's goal was to have all 383 lots rented to tenants with mobile homes that were owner-occupied.

The Taxpayer argued that the amount paid shown in the Bill of Sale in each of these eight appeals is the best evidence of market value of the mobile home. However, a purchase price, standing alone, is not conclusive evidence of actual value. "Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value."

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<sup>9</sup> At least three of these eight mobile homes were shipped from somewhere in Indiana to the subject property.

*Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). What is at issue in these eight appeals is the market value of livable mobile homes located in a mobile home park in Buffalo County on January 1, 2011. The Taxpayer's cost to purchase each mobile home between 2008 and 2010 is just one indicia of the market value of each property. The Taxpayer's other costs associated with making each mobile home livable may also be considered, as well as other market conditions. The Commission therefore finds that the amounts on each Bill of Sale are not sufficient evidence to prove actual value of the eight mobile homes. The Commission also finds that the evidence regarding the Taxpayer's actual costs is not sufficient to rebut the presumption in favor of the County Board's determinations and is not clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable.

## V. EQUALIZATION

### A. Law

"Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution." *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). 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. 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *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). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). 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. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

## **B. Summary of the Evidence**

### **1. 60.4 Acre Mobile Home Park, 11C-231**

The Taxpayer offered a 45 acre mobile home park as a comparable to the subject property (comparable). E70:14-15. The comparable has improvements similar to those of the subject property, including a 192 square foot utility building as well as utility hookups, paving, and lighting to accommodate 275 mobile home lots, but no common area. Spencer testified the comparable property was across the road from the subject property, was improved as a mobile home park in the 1980's, had wider streets, better off-street parking, bigger lots, and a nicer overall appearance. Anderson testified that he agreed that the comparable property had wider streets, better parking, and bigger lots, but he stated both properties had a similar overall appearance. Anderson also testified that the comparable parcel had less negative influence from the railroad and the grain elevator that were both adjacent to the subject property.

#### **a. Cost Approach**

As he did with the subject property, the Assessor considered both the cost approach and the income approach when assessing the value of the comparable parcel. E70:14. When considering the cost approach for this comparable, the Assessor first determined the contribution to value of the land component to be \$612,000. E70:15. Each of the 45 acres was valued at \$13,600 per acre (45 x \$13,600). E70:15. In comparison, the land component of the subject property was valued less per acre, at \$12,682. E70:4.

The Assessor then determined the replacement cost new of the improvements was \$2,424,430, based upon cost tables provided by Marshall & Swift. E70:15. According to Spencer, the comparable was first improved as a mobile home park in the mid-1980's, but, as was the case with the subject property, the Assessor gave less than a 1% (\$1,065) discount for physical and functional depreciation. E70:15.<sup>10</sup> Therefore, replacement cost new less physical and functional depreciation was \$2,423,365. E70:15. The Assessor also assigned the same reduction of 15% for economic depreciation as was given to the subject property. Economic depreciation for the comparable of \$363,505 was subtracted from replacement cost new less physical and functional depreciation (\$2,423,365 - \$363,505). E70:4.<sup>11</sup> Total replacement cost new less depreciation for the improvements was \$2,059,860. E70:15. Therefore, the cost approach value as determined by the Assessor for this comparable property was \$2,671,860 for land and improvements (not including the value of any mobile homes) (\$612,000 + \$2,059,860).

When comparing the assessment of the subject property to the assessment of the comparable, using the cost approach, the Commission finds the following: the per acre land value of the comparable was higher than the per acre value of the land component of the subject property; costs for both were based upon the same costing tables; and economic depreciation for both was 15%. While Anderson testified the comparable had less negative influence due to its location which was farther from the railroad tracks and the grain elevator, no evidence was offered to quantify how much more economic depreciation the subject property should receive. Moreover, while the evidence does not explain why the subject property and the comparable property, having chronological ages of more than 30 years and more than 20 years respectively, both had physical depreciation of less than 1%, no contrary evidence was offered. Therefore, there is not sufficient evidence to conclude that the cost approach utilized by the Assessor violated any uniformity principle.

### **b. Income Approach**

While the Assessor used both the cost approach and the income approach to value the comparable property, it is important to note that the final value reconciliation was the same amount as the estimation of value using the income approach. E70:15. Therefore, it appears that

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<sup>10</sup> See Footnote 4 above.

<sup>11</sup> See Footnote 5 above.

the Assessor relied heavily upon the income approach, as compared to the cost approach, when valuing the comparable property.<sup>12</sup>

When considering the income approach for this comparable, it appears the Assessor used a direct capitalization analysis to arrive at an estimated value of \$2,494,800. E70:15. Anderson testified that market rent for mobile home lots was \$250 and that actual rent at this comparable was also \$250 as of January 1, 2011. Using the same income approach methodology that was used for the subject property, it appears the Assessor first annualized the potential monthly rent and then multiplied by 275, the number of rent-producing lots, to arrive at gross income. However, while Anderson testified that monthly market rent was \$250, and while \$250 was used in the income approach for the subject property, the monthly rental rate used in the income approach for the comparable was only \$210. This monthly rental rate was annualized to \$2,520 to arrive at gross income of \$693,000 ( $\$2,520 \times 275$ ). E70:15. The Assessor then deducted 20% for estimated vacancy and collection losses to arrive at an effective gross income of \$554,400 ( $\$693,000 - (\$693,000 \times .20)$ ).<sup>13</sup> E70:15. The Assessor next estimated reasonable and typical expenses to be 55% of gross income to arrive at a net operating income of \$249,480 ( $\$554,400 - (\$554,400 \times .55)$ ).<sup>14</sup> E70:15. Finally, the Assessor estimated the capitalization rate at 10% after analyzing sales of similar properties in neighboring states.<sup>15</sup> The application of a 10% capitalization rate resulted in an indicated income approach value of \$2,494,800 ( $\$249,480 / .10$ ).<sup>16</sup> E70:15.

Anderson's testimony that typical rent for a mobile home lot in the market area was \$250 per month is persuasive evidence that a rental rate of \$250 should have been used in the income approach, as applied to both the subject property and the comparable property. While Spencer testified that the subject property was fully occupied on January 1, 2011, there was no evidence that the vacancy and collection losses of the comparable should have been something other than 20%. Likewise, while the subject property received a less favorable expense deduction, there

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<sup>12</sup> As noted above, the final value reconciliation for the subject property was lower than the estimated values for both the cost approach and the income approach. E70:4.

<sup>13</sup> The Assessor deducted only 15% for vacancy and collection losses for the subject property. E70:4.

<sup>14</sup> The Assessor deducted only 54% for expenses for the subject property. E70:4.

<sup>15</sup> There was no evidence of comparable property in Nebraska for the relevant time period.

<sup>16</sup> A more favorable capitalization rate of 11% was used in the income approach for the subject property. E70:4.

was no evidence that the comparable property should have had an expense deduction lower than 55%.

Anderson testified that he conducted research on sales and listings of mobile home parks in states surrounding Nebraska, after finding no comparable Nebraska sales. He stated that capitalization rates ranged from 9.5% to 12%, with the majority being at 11%. Anderson's testimony regarding capitalization rates is credible. Since the subject property and the comparable property were in the same market, the Commission finds that the same capitalization rate should have been used. However, since the less favorable rate of 10% was used in the income approach for the comparable property, and since the rates used for both the subject property and the comparable were within the range of capitalization rates found by Anderson in his review, there is no basis for an equalization adjustment on that factor alone.

Since the Assessor utilized a rental rate of \$210 for the comparable property when typical rental rates for mobile home lots in the market were \$250, there is sufficient evidence to conclude that the taxable value of the subject property is not equalized with the taxable value of the comparable property, and that an equalized taxable value is warranted, based upon the following:<sup>17</sup>

Total Annualized Rent ( $\$210 \times 12 \times 383$ )	\$965,160
Vacancy & Collection Loss ( $\$965,160 \times .15$ )	\$144,774
Effective Gross Income ( $\$965,160 - \$144,774$ )	\$820,386
Expenses ( $\$820,386 \times .54$ )	\$443,008
Net Operating Income ( $\$820,386 - \$443,008$ )	\$377,378
Capitalization Rate 11%	
Income Approach Value ( $\$377,378 / .11$ )	<u>\$3,430,709</u>

Therefore, the Commission finds that equalized taxable value for the subject property is \$3,430,709.

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<sup>17</sup> The following data follows the income approach methodology used by the Assessor for both the subject property and the comparable property at Exhibits 70:4 and 70:15.

## **2. Mobile Homes**

The remaining 50 appeals concern the County Board's determinations of value of mobile homes owned by the Taxpayer on 50 of the 383 lots owned by Taxpayer.<sup>18</sup> In each of these appeals, Spencer's testimony above regarding costs for applicable freight and for making the mobile home livable on the subject property is also applicable here. The Taxpayer also offered several invoices of sales of similar makes and models to generally illustrate values of certain mobile homes when purchased.

For purposes of seeking lower equalized taxable values for each of these 50 mobile homes, the Taxpayer offered property record cards for several mobile homes that were asserted to be comparable to the Taxpayer's mobile homes. E140. Spencer also testified about some of the alleged comparable mobile homes. The mobile homes offered as comparables were of various sizes, were manufactured at varying quality levels, and included various amenities. Both Spencer and Anderson testified that neither the Taxpayer nor the Assessor made any attempts to make adjustments to any of the comparables. Anderson testified that the Assessor typically did not conduct internal inspections of mobile homes, and had not done any internal inspections of any of the subject property mobile homes or of any of the mobile homes offered as comparables. Without evidence of specific similarities or differences between the subject property and the alleged comparables, with quantified adjustments, the Commission has no basis for ordering equalized taxable values for the subject property mobile homes.

## **VI. CONCLUSION**

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination in Case #11C-231, but not in any other. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable in

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<sup>18</sup> 11R-142, 11R-145, 11R-146, 11R-147, 11R-149, 11R-150, 11R-151, 11R-152, 11R-153, 11R-156, 11R-157, 11R-158, 11R-159, 11R-162, 11R-163, 11R-164, 11R-165, 11R-166, 11R-168, 11R-169, 11R-170, 11R-171, 11R-172, 11R-173, 11R-174, 11R-175, 11R-176, 11R-177, 11R-179, 11R-180, 11R-181, 11R-182, 11R-184, 11R-186, 11R-188, 11R-189, 11R-192, 11R-193, 11R-194, 11R-195, 11R-198, 11R-199, 11R-200, 11R-201, 11R-202, 11R-203, 11R-204, 11R-206, 11R-207, 11R-208.

Case #11C-231, but there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable in any of the other appeals.

For all of the reasons set forth above, the determinations by the County Board are vacated and reversed in Case # 11C-231, and affirmed in Case # 11R-142, 11R-143, 11R-145, 11R-146, 11R-147, 11R-149, 11R-150, 11R-151, 11R-152, 11R-153, 11R-156, 11R-157, 11R-158, 11R-159, 11R-161, 11R-162, 11R-163, 11R-164, 11R-165, 11R-166, 11R-168, 11R-169, 11R-170, 11R-171, 11R-172, 11R-173, 11R-174, 11R-175, 11R-176, 11R-177, 11R-179, 11R-180, 11R-181, 11R-182, 11R-184, 11R-185, 11R-186, 11R-187, 11R-188, 11R-189, 11R-191, 11R-192, 11R-193, 11R-194, 11R-195, 11R-196, 11R-197, 11R-198, 11R-199, 11R-200, 11R-201, 11R-202, 11R-203, 11R-204, 11R-205, 11R-206, 11R-207, and 11R-208.

## **VII. ORDER**

### **IT IS ORDERED THAT:**

1. The decision of the Buffalo County Board of Equalization determining the value of the subject property for tax year 2011 is reversed in Case # 11C-231.<sup>19</sup>
2. The decisions of the Buffalo County Board of Equalization determining the value of the subject properties for tax year 2011 are affirmed in Case # 11R-142, 11R-143, 11R-145, 11R-146, 11R-147, 11R-149, 11R-150, 11R-151, 11R-152, 11R-153, 11R-156, 11R-157, 11R-158, 11R-159, 11R-161, 11R-162, 11R-163, 11R-164, 11R-165, 11R-166, 11R-168, 11R-169, 11R-170, 11R-171, 11R-172, 11R-173, 11R-174, 11R-175, 11R-176, 11R-177, 11R-179, 11R-180, 11R-181, 11R-182, 11R-184, 11R-185, 11R-186, 11R-187, 11R-188, 11R-189, 11R-191, 11R-192, 11R-193, 11R-194, 11R-195, 11R-196, 11R-197, 11R-198, 11R-199, 11R-200, 11R-201, 11R-202, 11R-203, 11R-204, 11R-205, 11R-206, 11R-207, and 11R-208.

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<sup>19</sup> Assessed value, as determined by the County Board, 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 of equalization at the protest proceeding.

3. The assessed value of the subject property for tax year 2011 is:

<b>Case No.</b>	<b>Assessed Value</b>
11C-231	\$3,430,709
11R-142	\$43,175
11R-143	\$25,695
11R-145	\$22,055
11R-146	\$28,820
11R-147	\$26,260
11R-149	\$35,000
11R-150	\$26,355
11R-151	\$43,710
11R-152	\$28,445
11R-153	\$27,060
11R-156	\$25,895
11R-157	\$26,090
11R-158	\$27,860
11R-159	\$42,865
11R-161	\$29,455
11R-162	\$24,485
11R-163	\$27,500
11R-164	\$43,075
11R-165	\$43,230
11R-166	\$47,270
11R-168	\$21,540
11R-169	\$42,835
11R-170	\$42,865
11R-171	\$28,420
11R-172	\$26,380
11R-173	\$42,885
11R-174	\$42,615

<b>Case No.</b>	<b>Assessed Value</b>
11R-175	\$28,710
11R-176	\$27,565
11R-177	\$26,010
11R-179	\$43,320
11R-180	\$24,225
11R-181	\$27,925
11R-182	\$28,630
11R-184	\$26,165
11R-185	\$22,975
11R-186	\$26,000
11R-187	\$19,210
11R-188	\$26,235
11R-189	\$26,235
11R-191	\$24,750
11R-192	\$28,795
11R-193	\$28,795
11R-194	\$42,935
11R-195	\$42,865
11R-196	\$16,660
11R-197	\$45,000
11R-198	\$21,485
11R-199	\$28,795
11R-200	\$42,865
11R-201	\$24,565
11R-202	\$25,650
11R-203	\$28,340
11R-204	\$28,795
11R-205	\$39,030
11R-206	\$22,630

<b>Case No.</b>	<b>Assessed Value</b>
11R-207	\$28,050
11R-208	\$27,255

4. This decision and order, if no appeal is timely filed, shall be certified to the Buffalo County Treasurer and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2011.
8. This order is effective for purposes of appeal on April 11, 2012.

Signed and Sealed: April 11, 2012.

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.