

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

Nancy J. Giff,  
Appellant,

v.

Sarpy County Board of Equalization  
Appellee,

Case No: 10R-134

Order Reversing the Decision of  
the Sarpy County Board of Equalization

**For the Appellant:**

Martin Giff,  
Taxpayer

**For the Appellee:**

Michael A. Smith,  
Sarpy County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 6.64 acre residential parcel located in Sarpy County, Nebraska, improved with a 3,886 square foot home. The legal description of the Subject Property is found at Exhibit 1.

**II. PROCEDURAL HISTORY**

The Sarpy County Assessor (Assessor) determined that the assessed value of the subject property was \$533,394 for tax year 2010. Nancy J. Giff (Taxpayer) protested this assessment to the Sarpy County Board of Equalization (County Board) and requested an assessed valuation of \$425,000. The County Board determined that the assessed value for tax year 2010 was \$533,394. (E1)

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on November 4, 2011.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>1</sup> 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 making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>2</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>3</sup>

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>4</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>5</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

<sup>3</sup> *Id.*

<sup>4</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>5</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>6</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>7</sup> *Bottof v. Clay County Bd. of Equalization*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

## 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.<sup>8</sup>

"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."<sup>9</sup> "Actual value, market value, and fair market value mean exactly the same thing."<sup>10</sup> 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.<sup>11</sup> All real property in [Nebraska] subject to taxation shall be assessed as of January 1.<sup>12</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>13</sup>

The County Assessor, in order to accurately assess the critical characteristics of the subject property, may need to inspect the subject property. "Where the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain."<sup>14</sup> However, where the Taxpayer refuses the County's request to inspect the property, the provisions of the Adverse Inference Rule are triggered.<sup>15</sup> The provisions of this rule may be summarized as follows: where the Taxpayer refuses to allow the Assessor or the County Board to inspect the subject property, after challenging the assessed value as determined by the County Board, there is a presumption that the results of the inspection would militate against the Taxpayer's interest. The finder of

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<sup>8</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>9</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

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

<sup>11</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

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

<sup>13</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>14</sup> *Granger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

<sup>15</sup> *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

fact is the sole judge of what probative force to give the fact that the Taxpayer refused the request to inspect the property. Furthermore, the relative convincing power of the inferences to be drawn from that fact is for the determination of the finder of fact.

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

Martin Giff, a General Certified Licensed Appraiser since 1992, testified on behalf of the Taxpayer as an owner of the subject property. Giff asserted that the County had erred in its calculation of the actual value of the subject property using the cost approach by: (1) assigning an incorrect value to the land component; (2) assigning an incorrect quality grade to the improvement, and (3) applying the incorrect functional depreciation. Giff testified that the subject property is located in market area B09.<sup>16</sup> Giff asserted that there were no comparable properties located within the market area because of the subject property's size and physical characteristics. Instead, Giff presented alleged comparable properties as contained in Exhibits 22 to 25 and Exhibit 41 for use in determining the land value of the subject property. Giff acknowledged that there were differences between the subject property and some of the alleged comparable properties, and also testified that he made no adjustments to the alleged comparable properties, nor did he attempt to quantify the differences. Giff offered an opinion of value of \$75,000 for the land component of the subject property.

Giff also asserted that the County erred in rating the subject property as "Very Good" quality. Giff asserted that the quality of a property could be determined by examining the exterior characteristics of the property and applying the appropriate rating. Giff testified that he viewed the exteriors of several different properties detailed in Exhibits 27 to 37, which the County Assessor rated as "Good" quality. Giff expressed his opinion as a licensed appraiser that these properties had substantially higher quality exterior features and ornamentation than the subject property. For these reasons, Giff asserted that the subject property should be rated at the highest as "Good" quality. Giff did not inspect the interiors of these alleged comparable properties.

Giff also asserted an overall market value for the subject property as of January 1, 2010, of \$342,046. Giff testified that he arrived at his opinion of value by averaging the total per square foot value of the most similar alleged comparable properties.

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<sup>16</sup> See also, Exhibit 5:1.

Larry Houlton testified on behalf of the County Board. Houlton was a registered appraiser with more than ten years of assessment experience in Douglas and Sarpy Counties. He testified that within the B09 market area the land components of real property with more than one acre of land was valued at \$80,000 for the first acre, \$15,000 for the second acre, and \$5,000 for each subsequent acre.<sup>17</sup> Houlton also provided the breakdown for the per acre value for market areas B03 and B04 which contain some of Giff's alleged comparable properties.<sup>18</sup> These breakdowns indicate that market area B03 contained no properties with more than one acre of land, that a lot value of \$26,000 was applied to all property within the market area, and that in market area B04 the land components of real property with more than one acre of land was valued at \$60,000 for the first acre, \$6,000 for the second acre, and \$3,000 for each subsequent acre. He further testified that the alleged comparable contained in Exhibit 26 had a lower value because the same owner owned an adjacent property.

Houlton testified that he attempted to conduct an interior inspection of the subject property, and after he was unable to do so, he relied upon the previous inspector's conclusions concerning the quality and interior characteristics of the home.<sup>19</sup> He asserted that many of the factors considered in the determination of the quality class of the property are determined by interior elements of the property. Houlton expressed his opinion that the quality of the subject property could not be determined solely upon the exterior features of the property. Houlton indicated that the last time the subject property was inspected was at the time the home was built in 1998. Houlton testified that in order to correct any quality errors for the subject property he would need to perform an interior inspection of the property. He also asserted that the many of the factors for determining the quality of a property could be made at the time and immediately following the construction of the property. Houlton testified that it was possible for a property to have a higher quality rating based upon interior factors, while the exterior factors may cut against the higher valuation. Houlton also testified that the County used the cost approach to value the subject property, and after completing a corrected cost approach, his opinion of value for the subject property as of January 1, 2010 was \$531,655.<sup>20</sup>

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<sup>17</sup> Exhibit 11:1

<sup>18</sup> Exhibit 54.

<sup>19</sup> The Taxpayer refused to allow the Assessor to inspect the interior of the subject property. See Exhibits 2:1, 4:2, and 4:4.

<sup>20</sup> See Exhibit 15:2.

## C. Analysis and Conclusions

The issues in this case revolve around the correct application of the cost approach: (1) whether the value of the land component of the subject property was properly determined; (2) whether the quality grade for the subject property was accurately determined; and (3) whether the correct functional depreciation was applied. 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; (5) 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.<sup>21</sup>

### 1. Land Component

When estimating the value of the land component, the assessor or appraiser may use any accepted appraisal or mass appraisal technique.<sup>22</sup> Houlton testified that the County Assessor used the sales comparison approach to determine the value of the land component within each market area. The Taxpayer's attempt to value the subject property can best be expressed as an attempt to determine the value using the sales comparison approach.

The sales comparison approach requires a systematic procedure.<sup>23</sup> One step in the procedure requires the Assessor to "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison."<sup>24</sup> The Assessor must "[t]hen adjust the price of each sale property reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable."<sup>25</sup> While Giff indicated some differences between the subject property and the alleged comparable properties, Giff did not make any adjustments to the alleged comparable sales, or quantify the differences.

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<sup>21</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010), at 230.

<sup>22</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009)

<sup>23</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-302.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The Commission finds that the County Board's determination of the land value meets accepted mass appraisal techniques and is neither arbitrary nor unreasonable.

## 2. Quality

When determining the quality of a residence:

The quality of construction of a residence will influence its cost. Because quality may vary within a given type of residence, the Square Foot Method provides different levels of quality for each different type of residence. Examination of both materials and workmanship is fundamental when determining the overall quality of construction. While the quality of materials and workmanship of individual building components may vary, the overall quality will tend to be consistent for the entire residence. Furthermore, the quality of materials and workmanship will tend to influence each other.<sup>26</sup>

In order to accurately determine the quality of a property, an interior inspection is necessary. "An inspection and a suitable description of the site improvements, including the building, should be the first step in the cost approach."<sup>27</sup> This step requires the following elements of the subject property to be rated: (1) overall quality; (2) use type; (3) construction grade; (4) structure; (5) exterior; (6) roof; (7) wiring and fixtures; (8) windows; (9) plumbing; (10) heating and air-conditioning; (11) special features; (12) equipment; (13) room and finish detail; (14) bathroom details; (15) construction record; and (16) miscellaneous improvements.<sup>28</sup>

The Taxpayer refused interior inspections of the property. The County Assessor determined the quality of the subject property as "Very Good" quality based upon previous interior inspections of the subject property performed by previous County Assessors.<sup>29</sup> "Residences at Very Good Quality are typical of those built-in high-quality tracts or developments and are frequently individually designed. Attention has been given to interior refinements and detail. Exteriors have good fenestration with some custom ornamentation."<sup>30</sup> Giff asserted that the subject property should be rated as "Good" quality.

Residences of Good Quality may be mass produced in above-average residential developments or built for an individual owner. Good-quality standard materials are used throughout. These houses generally exceed the minimum construction requirements of

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<sup>26</sup> *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (12/2010) at pg. 6.

<sup>27</sup> *Property Assessment Valuation, 3rd Ed.*, International Association of Assessing Officers (2010), at 230.

<sup>28</sup> *Id.* at 233-234.

<sup>29</sup> See Exhibit 2:1, Exhibit 4:2, and Exhibit 4:4.

<sup>30</sup> *Residential Cost Handbook*, Marshall & Swift/Boeckh, LLC, (6/2011) at VG1.

lending institutions, mortgage insuring agencies and building codes. Some attention is given to architectural design in both refinements and detail. Interiors are well finished, usually having some good-quality wallpaper or wood paneling. Exteriors have good fenestration with ornamental materials or other refinements.<sup>31</sup>

Giff asserted that the quality of a property could be determined by driving past or examining the photos of a property. We disagree. According to professionally accepted appraisal techniques, a property with good fenestration and some exterior custom ornamentation which is built from purchased plans could be either “Good” quality or “Very Good” quality. In this case, the difference between the two grades for the subject property is most dependent upon the interior characteristics of the property; it is the distinction between the amount of attention given to, and the quality of interior refinements and detail. For “Very Good” quality property, specific attention is given to detailed interior refinements.<sup>32</sup> Conversely, for “Good” quality property, there is “some attention ...to...both refinements and detail,” and the property contains “well finished” interiors “usually having some good-quality wall paper or wood paneling.”<sup>33</sup>

If Giff is correct and the County Board has relied upon the assignment of an incorrect quality grade for the structure, then an interior inspection would be needed in order to obtain sufficient knowledge to make that conclusion. The Nebraska Supreme Court has recognized the importance of an interior inspection in determining the actual valuation of real property subject to taxation. The Court has held that “(w)here the county assessor does not act upon his own information, or does not make a personal inspection of the property, any presumption as to the validity of the official assessment does not obtain.”<sup>34</sup> Given this mandate, where the Taxpayer refuses the request to inspect the property, the provisions of the Adverse Inference Rule are triggered.<sup>35</sup> The provisions of this rule may be summarized as follows: where the Taxpayer refuses to allow the Assessor to inspect the subject property, after challenging the assessed value as determined by the Assessor, there is a presumption that the results of the inspection would militate against the Taxpayer’s interest. The finder of fact is the sole judge of what probative force to give the fact that the Taxpayer refused the Assessor’s request to inspect the property.

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<sup>31</sup> *Id.* at Good-1.

<sup>32</sup> *Id.* at VG1.

<sup>33</sup> *Id.* at Good-1.

<sup>34</sup> *Grainger Bros. Co. v. County Bd. of Equalization of Lancaster Co.*, 180 Neb. 571, 582-83, 144 N.W.2d 161, 169 (1966).

<sup>35</sup> *See Yarpe v. Lawless Distrib. Co.*, 7 Neb.App. 957, 962 - 963, 587 N.W.2d 417, 421 (1998).

Furthermore, the relative convincing powers of the inferences to be drawn from that fact is for the determination of the finder of fact.

The Commission gives significant probative force to the fact that the Taxpayer did not allow an interior inspection when requested and yet still asserts that the quality classification assigned to the subject property should be changed. Militating against the Taxpayer, the Commission determines that the evidence supports the County Board's determination of "Very Good" quality for the subject property.

### **3. Functional Depreciation**

Giff offered as his opinion that it would cost \$20,000 to remove a tennis court located on the Subject Property and that the deteriorated tennis court imposed a 5% functional obsolescence to the subject property. However, Giff did not provide the Commission any additional evidence, including estimates or bids, to support his assertions or opinion. While Giff's opinion of value both as a licensed appraiser and as an owner of the subject property are competent evidence, without additional supporting evidence, it does not rise to the level of clear and convincing evidence that there was a systematic will or failure of a plain legal duty, but is at best evidence of a difference of opinion.

Houlton testified that without an internal inspection but looking from photographs and property record cards that in his opinion there should be no change to the functional depreciation of the property. Based upon the evidence received, including the photographs in Exhibit 20, we agree.

For the above reasons, the Commission finds the adjusted determination of actual value of \$531,655 is clear and convincing evidence of actual value of the subject property.

## **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."<sup>36</sup> Equalization is the process of ensuring that all taxable property is placed on the

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<sup>36</sup> *Neb. Const.*, Art. VIII, §1.

assessment rolls at a uniform percentage of its actual value.<sup>37</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>38</sup> Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property.<sup>39</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>40</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>41</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>42</sup> In the evaluation of real property for tax purposes, where buildings and improvements are taxable as a part of the real estate, the critical issue is the actual value of the entire property, not the proportion of that value which is allocated to the land or to the buildings and improvements by the appraiser.<sup>43</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>44</sup>

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

Giff also asserted that the subject property was subject to economic depreciation. Giff referred to Exhibit 36, and Exhibits 38 to 45, in which alleged comparable properties were given between 10% and 21% economic depreciation. He further stated that the Assessor applied no economic obsolescence to the subject property.<sup>45</sup> Giff averaged the economic depreciation determined by the Assessor for the alleged comparable properties, and determined that the

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<sup>37</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>38</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>39</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>40</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>41</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>42</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>43</sup> *Bumgarner v. Valley County*, 208 Neb. 361, 303 N.W.2d 307 (1981).

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

<sup>45</sup> E5:3.

economic depreciation for the subject property ought to be set at 16%. Giff asserted his opinion of value for the subject property was \$75,000 for the land component and \$342,046 for the improvement's contribution to value.

Concerning an economic depreciation factor, Houlton testified that the economic depreciation was different within different neighborhoods and that within any neighborhood the amount of economic depreciation may vary among properties depending upon the quality and style of improvements and the overall actual value of the property. Houlton indicated that a similar property sale was available and that the comparable property had been assessed using the same amount of economic depreciation. Houlton testified that while other properties in the same neighborhood had different economic depreciation values, those properties contained different styles of improvements and thus differed in economic depreciation.

### **C. Analysis and Conclusion**

The Taxpayer has put at issue whether there was a uniform application of physical, functional, and economic depreciation for real property in Sarpy County. Giff's argument may be summarized as follows: (1) that the Assessor failed to apply all functional depreciation to the subject property while applying all functional depreciation available to other properties; and (2) the Assessor applied a greater portion of actual economic depreciation to other properties than to the subject property.

The Nebraska Constitution requires a levy of ad valorem real property taxes in a uniform and proportionate manner.<sup>46</sup> This requirement applies to all methods of property valuation, and by implication, extends to the determination and application of depreciation to properties when using the cost approach.<sup>47</sup> The burden on the Taxpayer requires clear and convincing evidence of a comparison of similar properties indicating that the value placed on the subject property was grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.<sup>48</sup>

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<sup>46</sup> *Neb. Const.*, Art. VIII, §1.

<sup>47</sup> *See Generally, Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>48</sup> *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

While Giff presented alleged comparable properties to the Commission for comparison of the rate of assessed economic depreciation, he made no adjustments based upon differences in location, size, style, type or overall actual value of the alleged comparable properties. Instead, he averaged the economic depreciation determined by the Assessor for the alleged comparable properties, and determined that the economic depreciation for the subject property ought to be set at 16%. Such averaging is not an acceptable method to determine valuation. Further, Giff did not quantify the differences between the properties. Without a quantification of the differences between the properties and the impact of those differences on the economic obsolescence of the properties the Taxpayer has not met the burden of producing clear and convincing evidence that the valuation placed on the subject property was grossly excessive and was the result of a systematic will or failure of a plain legal duty, and not mere error of judgment.

The Nebraska Supreme Court has concluded that mathematical precision in assessment valuations and equalization is impossible.<sup>49</sup> The appraisal of real estate is not an exact science.<sup>50</sup> The burden of persuasion is not met by a mere difference of opinion.<sup>51</sup>

## 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. The Commission also finds that there is clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.

Because the Commission finds that the adjusted determination of actual value of \$531,655 is clear and convincing evidence of actual value, the decision of the County Board should be reversed.

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<sup>49</sup> *LeDioyt v. County of Keith*, 161 Neb. 615, 622, 74 N.W.2d 455, 461 (1956).

<sup>50</sup> *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

<sup>51</sup> *Brenner v. Banner*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008) (quoting *Bumgarner v. County of Valley*, 208 Neb. 361, 366, N.W.2d 307, 310 (1981)).

**VII. ORDER**

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the subject property for tax year 2010 is reversed.<sup>52</sup>
2. The Assessed value of the Subject property for tax year 2010 is:

Land	\$118,200.00
Improvements	<u>\$413,455.00</u>
Total	\$531,655.00

3. This decision and order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on August 28, 2012.

Signed and Sealed: August 28, 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.

<sup>52</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 at the protest proceeding.