

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

James F. McCaslin and Jacquelyn C. McCaslin,  
Appellants,

Case Nos: 11C 363 & 12C 221

v.

Decision Reversing  
County Board of Equalization

Douglas County Board of Equalization  
Appellee.

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property is a commercial parcel improved with a 2,500 square foot dental office located at 1815 North 145<sup>th</sup> Street, Omaha, Nebraska.
2. The Douglas County Assessor assessed the Subject Property at \$480,900 for tax year 2011 and \$430,000 for tax year 2012.
3. James F. McCaslin and Jacquelyn C. McCaslin (herein referred to as the “Taxpayer”) protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a valuation of \$315,000 for tax years 2011 and 2012.
4. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$430,000 for tax years 2011 and 2012.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the State Office Building, in Omaha, Nebraska, before Commissioner Thomas D. Freimuth, on August 26, 2013.
7. Jacquelyn McCaslin, the Taxpayer, was present at the hearing.
8. Linda Rowe, an employee of the Douglas County Assessor’s Office, was present for the County Board.
9. The parties executed an agreement to consolidate the Taxpayer’s 2011 appeal (Case No. 11C-363) and 2012 appeal (Case No. 12C-221) for hearing purposes.<sup>1</sup>

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

10. The County Board submitted Assessment Reports for tax years 2011 and 2012 at the hearing. The Property Profile contained in the Assessment Reports for the Subject Property indicates that the County Board’s \$430,000 determinations for tax years 2011 and 2012 includes \$91,800 for land and \$338,200 for the improvement component. The Commission notes that the Assessment Reports indicate that the County Board’s determination for tax years 2002 through 2010 amounted to \$302,000 (land: \$91,800; improvement: \$210,400). The Property Profile also indicates that the Taxpayer purchased the Subject Property for \$353,000 in 2002.

<sup>1</sup> Case Files. The Commission discovered at the time of the hearing that the Taxpayer’s 2011 Subject Property valuation appeal was not scheduled contemporaneously with the 2012 Subject Property appeal. Thus, the agreement signed by the parties consolidated these appeals for hearing purposes and waived notice of hearing with respect to the 2011 appeal.

11. The Property Profile indicates that the Subject Property's 2,500 square foot improvement component is classified by the County as a "Medical Office" for "Occupancy" purposes. The Taxpayer stated that the Subject Property is a Dental Office operated by her husband, Dr. James McCaslin, D.D.S.
12. The County's 2011 Assessment Report indicates that the County Board's \$430,000 (\$172 per square foot) determination for that year was not based on the County Assessor's \$454,200 income approach valuation model.<sup>2</sup> Rather, based on a review of two comparable Property Profiles and testimony submitted by the Taxpayer and the County at the hearing, the County Board's determination was apparently based in substantial part on the following: (1) the \$435,000 sale of a 3,198 square foot medical office located at 1301 North 72<sup>nd</sup> Street in Omaha in 2011 (assessed at \$435,000 for tax years 2011 and 2012, or \$136 per square foot); and (2) the County Board's action in 2011 to reduce the County Assessor's \$1,103,900 2011 notice value of a 6,170 square foot medical office located next to the Subject Property at 1805 North 145<sup>th</sup> Street to \$860,000 based on a fee appraisal ( $\$860,000 \div 6,170 \text{ sq. ft.} = \$139$  per square foot assessment).
13. The Taxpayer presented photos of the Subject Property and the comparables referenced above located at 1301 North 72<sup>nd</sup> Street and at 1805 North 145<sup>th</sup> Street. The Taxpayer stated that the improvements on both comparables were constructed at approximately the same time as the Subject Property by the same builder. The Commission notes that the Property Profiles for the two comparables submitted by the Taxpayer indicate that improvements were constructed on the parcels in 1992, while the Property Profile for the Subject Property indicates that it was improved with a 2,500 square foot building built in 1994. The Commission also notes that the Property Profiles for the Subject Property and North 72<sup>nd</sup> and 1805 North 145<sup>th</sup> Street comparables rate the improvements on each parcel as "Good" in terms of quality and "Average" in terms of condition.
14. The Taxpayer stated that the comparable located adjacent to the Subject Property at 1805 North 145<sup>th</sup> Street is operated as a medical office. The Taxpayer also stated that the 72<sup>nd</sup> Street comparable is operated as a medical office. The Commission notes that the Property Profiles for these two comparables are consistent with these statements.

## STANDARD OF REVIEW

15. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</sup> "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."<sup>4</sup>

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<sup>2</sup> The County's 2011 Assessment Report, prepared by Mark Kriglstein, states that the County Assessor's \$454,200 recommendation to the County Board for tax year 2011 was based on a "revised medical office Income Approach model." Thus, the County Assessor's \$480,900 notice value for tax year 2011 referenced previously was based on the County Assessor's model prior to revision. Based on a review of the "Commercial Income Worksheet" contained in the 2011 Assessment Report, the County Assessor's model revision reduced market rent from \$18 to \$16 per square foot. The Commission notes that the County's 2012 Assessment Report, which references the County Board's \$430,000 determination for tax year 2012, does not contain a "Commercial Income Worksheet."

<sup>3</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

16. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>5</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>6</sup>
17. 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>7</sup>
18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

### **GENERAL VALUATION LAW**

19. 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>9</sup>
20. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>10</sup>

### **VALUATION ANALYSIS**

21. The Taxpayer asserted that the County overvalued the Subject Property with the use of an unreasonable or arbitrary income approach model. In support of this assertion, the Taxpayer submitted documentation that included analysis of 20 comparables. The Taxpayer did not, however, submit a fee appraisal of the Subject Property at the hearing

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

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

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

<sup>9</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>10</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

before the Commission. The Commission also notes that while the Taxpayer submitted Property Profiles for the North 72<sup>nd</sup> and 1805 North 145<sup>th</sup> Street comparables as noted above, such documentation was not presented for the other 18 comparables.

22. Based on this analysis, which included concern regarding the County's significant assessment increase in the aftermath of the economic crisis, the Taxpayer asserted that the actual value of the Subject Property amounted to \$315,000 for tax years 2011 and 2012.
23. The Taxpayer's opinion of value relies in part on the use of assessed values of comparable medical and/or dental offices. This approach is not a commonly accepted mass appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.
24. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's use of assessed values of comparable medical and/or dental offices not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's \$315,000 opinion of value to the extent it relies on the use of assessed values of comparables.
25. The Taxpayer's opinion of value also relies in part on the use of sales of comparable medical and/or dental offices. The Taxpayer determined the average sale value per square foot of comparable sales rated the same as the Subject Property in terms of quality and condition, and then multiplied the average times the area of the Subject Property. The Taxpayer's approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
26. Averaging is not an acceptable part of the sales comparison approach. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."<sup>11</sup>
27. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then 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. This step typically involves using the most similar sale properties and then adjusting for any remaining differences."<sup>12</sup>
28. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.<sup>13</sup> Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that

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<sup>11</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 308.

<sup>12</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301 - 302.

<sup>13</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008) at 141.

“[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”<sup>14</sup>

29. The Taxpayer’s \$315,000 opinion of value does not provide analysis regarding adjustments based on the elements of comparison referenced above. Additionally, while the Taxpayer submitted the Property Profile for the 1805 North 145th Street comparable sale in 2003, such documentation was not presented for the other comparable sales included in the analysis. Thus, the Commission is unable to place significant weight on the Taxpayer’s sales comparison valuation. The Commission notes, however, that while a fee appraisal of the Subject Property was not presented at the hearing, a certified appraiser would derive assistance from the detailed information analyzed by the Taxpayer.
30. Guidance for purposes of applying the sales comparison approach is widely available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission’s “Rules/Regulations” website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission’s “Decisions” website link.
31. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

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

32. Further, with respect to the Taxpayer’s concern regarding insufficient consideration of the economic crisis by the County, general guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.<sup>15</sup> For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.<sup>16</sup> Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update

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<sup>14</sup> Neb. Rev. Stat. §77-1371 (Reissue 2009).

<sup>15</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>16</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**<sup>17</sup>

33. The Illinois Court of Appeal stated as follows regarding consideration of “current market conditions” in a 2012 opinion affirming a lower court’s approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

Our courts today face a similar situation as that faced by the court in [1937] *Levy* during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.<sup>18</sup>

34. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.<sup>19</sup>
35. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. Nonetheless, the Commission finds that the Taxpayer did not provide sufficient clear and convincing evidence to quantify the impact of the economic crisis on the actual value of the Subject Property.

### GENERAL EQUALIZATION LAW

36. “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>20</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>21</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

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<sup>17</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

<sup>18</sup> *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

<sup>19</sup> *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

<sup>20</sup> *Neb. Const.*, Art. VIII, §1.

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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>22</sup>

37. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.<sup>23</sup>
38. 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>24</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>25</sup>
39. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>26</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>27</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>28</sup>
40. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>29</sup>

## EQUALIZATION ANALYSIS

41. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of the comparables located at 1301 North 72<sup>nd</sup> Street and at 1805 North 145<sup>th</sup> Street.<sup>30</sup> In support of this assertion, the Taxpayer submitted Property Profiles for these properties, together with photos thereof.
42. Based on a review of the Property Profiles, photos and testimony relating to the Subject Property and the two comparables, the Commission finds that the parcels are similar in terms of appearance, age, quality and condition.

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<sup>22</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>23</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>24</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>25</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>26</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>27</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>28</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>29</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>30</sup> The County Board's \$430,000 assessment of the Subject Property for tax years 2011 and 2012 amounts to \$172 per square foot based on the 2,500 square foot improvement component referenced in the Property Profile (the Commission notes that the County Assessor's \$254,200 income worksheet valuation for 2011 uses 2,500 square feet and does not include an offset for common area or any other factor). In contrast, the County Board's \$435,000 assessed value of the comparable located at 1301 North 72<sup>nd</sup> Street for tax year 2011 amounted to \$136 per square foot based on the Property Profile's 3,198 square foot size and \$128 per square foot based on the 3,392 square foot size used in the County Assessor's 2011 income worksheet – it is unclear regarding the basis of this size differential. The County Board's \$860,000 assessed value of the comparable located at 1805 North 145<sup>th</sup> Street for tax year 2011 amounted to \$139 per square foot based on the Property Profile's 6,170 square foot gross size and \$150 per square foot based on the 5,738 square foot size used in the County Assessor's 2011 income worksheet, which the Commission assumes is based on an offset for common area.

43. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>31</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>32</sup>
44. The Commission finds that the North 72<sup>nd</sup> Street parcel submitted by the Taxpayer is not similarly situated or comparable for equalization analysis purposes because it is located a significant distance from the Subject Property.
45. Based on testimony at the hearing and a review of the Property Profile for the North 72<sup>nd</sup> Street property, the ratio of assessed value to market value of this parcel appears to be 100%.<sup>33</sup> In this regard, the Property Profile indicates that the County assessed the North 72<sup>nd</sup> Street parcel in an amount (\$435,000) equal to the amount the Taxpayer testified that it sold for in 2011. Thus, because this ratio is not less than 100%, the North 72<sup>nd</sup> Street property does not provide basis to obtain equalization relief.<sup>34</sup>
46. The Commission finds that the 1805 North 145<sup>th</sup> Street parcel submitted by the Taxpayer is similarly situated or comparable for equalization analysis purposes. The Commission acknowledges that the gross improvement component of this comparable is larger than the Subject Property (6,170 square feet vs. 2,500 square feet) and thus triggers possible application of the concept of economies of scale, whereby the per square foot value of a smaller property is often valued more than a larger property.<sup>35</sup> Based on a review of the income worksheets contained in the Property Profiles for the Subject Property and the comparables located at 1805 North 145<sup>th</sup> Street **and** North 72<sup>nd</sup> Street, however, the Commission finds that size does not impact the per square foot value of the parcels under the County's model.<sup>36</sup> It follows that, by failing to equalize the Subject Property with its neighbor at 1805 North 145<sup>th</sup> Street on a per square foot valuation basis, the County Board's determinations for tax years 2011 and 2012 were unreasonable or arbitrary because they treat similarly situated properties at materially different levels.<sup>37</sup>

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<sup>31</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>32</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>33</sup> The North 72<sup>nd</sup> Street Property Profile indicates that the County Board assessed this parcel in an amount (\$435,000) equal to its 2011 sale price. Thus, assuming that the \$435,000 sale in 2011 reflects market value, the ratio of assessed to market value is 100%.

<sup>34</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>35</sup> See, *The Appraisal of Real Estate*, Appraisal Institute, 13<sup>th</sup> Ed., 2008, 212 (“[r]educing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.”)

<sup>36</sup> The County's income worksheet for the Subject Property uses the following values: (1) \$18 per square foot rent rate; (2) 5% vacancy & collection loss rate; (3) 15% expense ratio; and (4) 8% capitalization rate. The income worksheet for the parcel located at 1805 North 145<sup>th</sup> Street uses the following values to arrive at the County Assessor's \$1,103,900 notice value, which the County Board reduced to \$860,000 based on the submission of a fee appraisal as noted previously: (1) \$18 per square foot rent rate; (2) 5% vacancy & collection loss rate; (3) 10% expense ratio; and (4) 8% capitalization rate. Thus, even though the Subject Property is significantly smaller than its neighbor, the County used identical income values, except for a higher expense ratio applied to the Subject Property.

<sup>37</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999); *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 - 529 (2008) (“By adjudicating tax protests in greatly disparate amounts . . . the Board failed to fulfill its ‘plain duty’ to equalize property valuations.”) As indicated previously, in 2011 the County Board reduced the County Assessor's \$1,103,900 2011 notice value of a medical office located next to the Subject Property at 1805 North 145<sup>th</sup> Street to \$860,000 based on a fee appraisal (\$139 per square foot based on 6,170 square foot gross size; \$150 per square foot based on the 5,738 square foot size used in the County's income model). The County Board, however, failed to equalize the Subject Property with its neighbor at 1805 North 145<sup>th</sup> Street.

47. In the case where it is determined that the decisions of County Board were unreasonable or arbitrary from an equalization standpoint, the Commission must review the evidence and adopt the most reasonable per square foot value presented.<sup>38</sup> The assessed valuation of the 1805 North 145<sup>th</sup> Street comparable for tax years 2011 and 2012 under the County Assessor's income worksheet is \$150 per square foot ( $\$860,000 \div 5,738$  sq. ft., which the Commission assumes does not include common area). In contrast, the assessed valuation of this comparable is \$139 per square foot using the gross square footage of the improvement component ( $\$860,000 \div 6,170$  sq. ft. = \$139) reflected in the parcel's Property Profile. Based on a review of all of the documents and statements presented at the hearing, the Commission finds that the best evidence of equalization value of the similarly situated comparable is \$150 per square foot, in substantial part because this amount results in equality using the County Assessor's income model. Therefore, the Commission finds that the equalization value of the Subject Property for tax years 2011 and 2012 is \$375,000 ( $\$150 \times 2,500$  sq. ft. building area used in County's income worksheet).

### CONCLUSION

- 48. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
- 49. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be vacated and reversed.

### ORDER

IT IS ORDERED THAT:

- 1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 are vacated and reversed.
- 2. That the taxable value of the Subject Property for tax years 2011 and 2012 is:
 

Land	\$ 91,800
Improvements	\$283,200
Total	\$375,000
- 3. This decision and order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
- 4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
- 5. Each Party is to bear its own costs in this proceeding.

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<sup>38</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999). See also, *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

6. This decision shall only be applicable to tax years 2011 and 2012.
7. This order is effective on January 3, 2014.

Signed and Sealed: January 3, 2014.

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Thomas D. Freimuth, Commissioner