

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

Linda M. Rowe,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 12R 131

Amended Decision and Order Affirming the  
Decision of the Sarpy County Board of  
Equalization  
(**Correction of Effective Date**)

**For the Appellant:**

Linda M. Rowe,  
Pro Se

**For the Appellee:**

John W. Reisz,  
Sarpy County Attorney

Per Curiam.

The determination of the County Board is affirmed.

**I. PROCEDURAL HISTORY**

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$280,257 for tax year 2012.<sup>1</sup> Linda M. Rowe (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$182,072.<sup>2</sup> The Sarpy County Board determined that the taxable value for tax year 2012 was \$200,000.<sup>3</sup>

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 March 4, 2013.

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<sup>1</sup> E1:1.

<sup>2</sup> E3:1.

<sup>3</sup> E3:1.

## II. FINDINGS OF FACT

The Subject Property is a residential parcel located in Sarpy County. The parcel is improved with a 2,252 square foot home. The legal description of the parcel is found at Exhibit 3. The property record card for the Subject Property is found at Exhibit 3.

The Subject Property and an additional parcel of property were listed on the market for \$275,000 from July 13, 2010, until February 2, 2011.<sup>4</sup> The Subject Property and an additional parcel of property were placed back on the market on May 16, 2011, with an asking price of \$275,000.<sup>5</sup> On August 3, 2011, the owner lowered the listing price to \$220,000.<sup>6</sup> In October 2011, the Taxpayer signed a contract to purchase the Subject Property and an additional parcel of property for \$200,000. The Taxpayer purchased the Subject Property and an additional parcel of property on January 31, 2012.<sup>7</sup>

The County Assessor's original noticed value of \$280,257 for the Subject Property was determined using the cost approach, a professionally accepted mass appraisal techniques permitted by Nebraska Statute.<sup>8</sup> During the process of the County Board appeal, the County Assessor revised his opinion of value, lowering the land value which reduced his opinion of the actual value of the Subject Property to \$270,257.<sup>9</sup>

The County Board rejected the County Assessor's opinion of value and determined that the actual value of the Subject Property was \$200,000, the sale price from the January 31, 2012, transaction which included the sale of an additional parcel of property.<sup>10</sup>

## III. 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 decision was arbitrary or unreasonable.

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<sup>4</sup> E28:3.

<sup>5</sup> E28:4.

<sup>6</sup> E28:4.

<sup>7</sup> E4:1.

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

<sup>9</sup> E2:1.

<sup>10</sup> E1:1.

The Commission finds that it was arbitrary or unreasonable for the County Board to determine that the actual value of the Subject Property was equal to the price of a sale including the Subject Property and another parcel.

Nebraska Statutes require that the Commission deny relief unless a majority of the Commissioners present at the hearing determine that relief should be granted.<sup>11</sup> While both Commissioners agree that the County Board's determination is unreasonable or arbitrary, a majority of Commissioners do not agree that relief should be granted.<sup>12</sup>

Because a majority of the Commission does not agree that relief should be granted, the determination of the County Board is affirmed.

#### **IV. ORDER**

**IT IS ORDERED THAT:**

1. The decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.<sup>13</sup>
2. The assessed value of the Subject Property for tax year 2012 is: \$200,000.
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 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2012.

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<sup>11</sup> Neb. Rev. Stat. §77-5016(13) (2012 Cum. Supp.)

<sup>12</sup> Commissioner Freimuth would find that the actual value of the Subject Property is \$182,072 Commissioner Salmon would find that the actual value of the Subject Property is \$263,334.

<sup>13</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.

7. This Decision and Order is effective for purposes of appeal on **August 4, 2014**.

Signed and Sealed: **August 4, 2014**.

SEAL

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Commissioner Thomas D. Freimuth, dissenting,

## **I. OVERVIEW**

I would find that the Taxpayer's \$200,000 purchase of the Subject Property and a smaller parcel in January 2012 is a strong indicator of actual value for tax year 2012. I would also find that the Taxpayer's \$200,000 purchase price of these two parcels is the best evidence of value in this case. Thus, because the smaller parcel was assessed at \$17,928 by the County for tax year 2012, I would find that the best evidence of value of the Subject Property is \$182,072 for tax year 2012 ( $\$200,000 - \$17,928 = \$182,072$ ).<sup>14</sup>

## **II. SUMMARY OF THE EVIDENCE**

- A.** The Property Record Card for the Subject Property provides that the Taxpayer purchased the parcel for \$200,000 on January 31, 2012, in close proximity to the assessment date of January 1, 2012.<sup>15</sup> The Property Record Card also provides that the Subject Property was sold for \$150,000 on June 15, 2001.<sup>16</sup>
- B.** The Property Record Card for the Subject Property sets forth the following assessment history:<sup>17</sup>

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<sup>14</sup> See, E3:1 & E18:1 (reflect \$17,928 assessment of smaller parcel).

<sup>15</sup> E4:1.

<sup>16</sup> E4:1.

<sup>17</sup> E4:1.

<b>YEAR EFFECTIVE</b>	<b>LAND VALUE</b>	<b>IMPROVEMENT VALUE</b>	<b>TOTAL VALUE</b>	<b>REASON</b>
2012	40000	16000	\$200,000	County Board Value
2011	50000	215378	\$265,378	County Assessor Value
2010	50000	210611	\$260,611	County Board Value
2009	50000	185000	\$235,000	County Board Value
2008	50000	213689	\$263,689	County Assessor Value
2007	55000	207151	\$262,151	County Assessor Value
2006	55000	191031	\$246,031	County Assessor Value
2005	40000	187107	\$227,107	County Assessor Value
2004	40000	164309	\$204,309	County Assessor Value
2003	35000	152135	\$187,138	County Assessor Value

- C.** The Taxpayer testified that she and her husband purchased the Subject Property and a nearby smaller parcel for \$200,000 total in an arm’s length transaction in January 2012 that reflects actual value in part because the property had been on market for more than a year.<sup>18</sup> The Taxpayer indicated that the Subject Property was listed on the open market since July 2010, and that the listing price was lowered to \$220,000 in August 2011.
- D.** In support of her assertion that the 2012 purchase price reflects actual value, the Taxpayer indicated that the area real estate market was depressed as a result of the 2008 economic crisis.
- E.** The County Assessor’s proposed total \$270,257 valuation for tax year 2012 seeks to value the improvement component of the Subject Property based on the cost approach. According to the Subject Property’s Property Record Card found at Exhibit 4, the improvement was built in 1991 and has an effective age of 21 years. The reliability of the cost approach is limited in the case of older residential properties such as the Subject Property.<sup>19</sup>
- F.** Tim Ederer, an assessor with the Sarpy County Assessor’s Office, testified that he believed the Taxpayer’s purchase did not reflect actual value in part because it reflected a bargain stemming from seller distress. Nonetheless, the Property Record Card’s

<sup>18</sup> See, E3:1 (County Board’s Referee recommends \$200,000 valuation of the Subject Property in part because it had been “on the market for over a year”).

<sup>19</sup> *Appraising Residential Properties*, 4<sup>th</sup> Edition, Appraisal Institute, 2007, at p. 260.

inclusion of the Taxpayer's \$200,000 purchase indicates that the County considered the transaction to be a valid arm's length transaction.<sup>20</sup>

### III. VALUATION ANALYSIS

Mr. Ederer, the County Board's expert, testified that he believed the seller of the Subject Property was distressed due to business and/or marital problems. I do not place much if any weight on this testimony because the Property Record Card includes the Taxpayer's \$200,000 purchase, thereby indicating that the County considered the transaction to be a valid arm's length transaction for sales file purposes.<sup>21</sup>

Nonetheless, in effect, the County Board's expert asserted that the January 2012 sale price should not be an indicator of value because it did not stem from an arm's length transaction. The County Board's expert also indicated that the County Assessor's mass appraisal model used to value properties in the Subject Property's market area excludes foreclosure sales and other distressed sales that are deemed non-arm's-length.

Even assuming the Taxpayer's January 2012 transaction was somehow distressed and not arm's length as asserted by Mr. Ederer of the County Assessor's Office, I find that the Taxpayer's purchase price is a strong indicator of value in the aftermath of the 2008 economic crisis. In this regard, *The Dictionary of Real Estate Appraisal* defines an arm's-length transaction as follows: "A transaction between unrelated parties under no duress."<sup>22</sup> In connection with the sales comparison approach to valuation, *The Appraisal of Real Estate* states as follows: "[s]ales that are not arm's-length . . . should be identified and rarely if ever used."<sup>23</sup>

Nebraska Statutes section 77-112 references arm's-length transactions in defining actual (i.e., market) value, stating as follows:

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.<sup>24</sup>

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<sup>20</sup> See, E4:1.

<sup>21</sup> See, E4:1.

<sup>22</sup> *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> Ed., Appraisal Institute, 2002, at p. 18.

<sup>23</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 304.

<sup>24</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

In addition to the factors referenced above in Nebraska Statutes section 77-112, *Property Assessment Valuation* states that actual or market value is derived from transactions involving “reasonable time for exposure to the market.”<sup>25</sup>

General guidance regarding consideration of the economic crisis by the County in the residential mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.<sup>26</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>27</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 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>28</sup>

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

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

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<sup>25</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 15; See, *The Appraisal of Real Estate*, 13 ed., Appraisal Institute, 2008, at pgs. 54-77

<sup>26</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>27</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

<sup>28</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 417-18.

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October 1, 2009, the macro economy had entered into what many commentators termed a ‘New Normal,’ meaning that the developed nations would enter into a prolonged period of low growth, high unemployment and a need for de-leveraging. This would add to the uncertainty surrounding the gaming industry in general and in Atlantic City specifically, as of the valuation date.” Unemployment rates started to increase significantly in 2008 and were still rising as of September 2009. This fact is significant because low unemployment rates are indicative of increased consumer spending on such discretionary items as gaming and entertainment. The perception that the nation’s economic trouble was not a transitory downturn, but a long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.<sup>29</sup>

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>30</sup>

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>31</sup>

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<sup>29</sup> *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at pgs. 1 – 2, 8 – 9 (New Jersey Tax Court 2013).

<sup>30</sup> *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Illinois Court of Appeals 2012) (emphasis added).

<sup>31</sup> *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

With respect to whether distressed sales generally can be considered reliable indicators of market value, several courts have issued opinions in the aftermath of the economic crisis.<sup>32</sup> In terms of the use of distressed sales in the property tax context, in 2012 the Oregon Tax Court considered whether “foreclosures and short sales characterize the market for the subject property” in *Greene v. Benton County Assessor*.<sup>33</sup> In summarizing the Taxpayer’s argument, the Court stated as follows:

The Taxpayer testified that, although he is not a licensed broker or appraiser, he owns 11 properties and is experienced in real estate. As support that the subject property sale is representative of its real market value, Greene provided an article by Alan Smith (Smith), Deputy Assessor, Ada County Assessor’s Office, Boise, Idaho, entitled “Distressed Sales: Anomaly or Market Value?” Smith states that “bank-owned resales, if they are marketed by a realtor, or through a multiple listing service for a time period considered to be an average exposure to the market, will likely be very close to fair market value in this type of market.”<sup>34</sup>

In holding that the Taxpayer failed to prove that foreclosures or short sales characterized the market under the sales comparison approach, the Oregon Tax Court in *Greene* indicated that proof that the “majority” of market area sales were distressed is required:

[P]roperty purchased through foreclosure may be “a voluntary *bona fide* arm’s-length transaction between a knowledgeable and willing buyer and a willing seller.” *Ward v. Dept. of Revenue*, 293 Or 506, 508, 650 P2d 923 (1982). “There are narrow exceptions determined on a case-by-case basis to the holding that bank-owned property sales are not typically representative of real market value.” *Brashnyk v. Lane County Assessor* (*Brashnyk*), TC-MD No 110308 at 8, WL 6182028 \*5 (Dec 12, 2011). “[W]here the majority of sales are distress, it would seem that that kind of sale would provide a more accurate reflection of the market.” *Morrow Co. Grain Growers v. Dept. of Rev. (Morrow)*, 10 OTR 146, 148 (1985)..... Plaintiffs have not presented any evidence that foreclosures and short sales characterize the market for the subject property. Plaintiffs provided a list of sales that occurred between 2003 and 2011 in the subject property

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<sup>32</sup> *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397 (Illinois Court of Appeals 2012); *Greene v. Benton County Assessor*, TC-MD 110687N (Oregon Tax Court 2012); *Voronaeff v. Crook County Assessor*, TC-MD No 110361C (Oregon Tax Court 2012); *Brashnyk v. Lane County Assessor*, TC-MD No 110308 (Oregon Tax Court 2011); *Witkin v. Lane County Assessor*, TC-MD No 110460C (Oregon Tax Court 2012); *Umpqua Bank v. Lane County Assessor*, TC-MD No 110594N (Oregon Tax Court 2012); *Columbus City School Dist. Bd. of Education v. Franklin County*, 983 N.E.2d 1285, 134 Ohio St.3d 529 (Ohio Supreme Court 2012) (bank sale deemed arm's-length because bank acted like a typically motivated seller); *Cattell v. Lake Cty. Bd. of Revision*, 2010-Ohio-4426, 2009-L-161 (Ohio Court of Appeals, Eleventh District 2010) (bank sales deemed arm's-length where properties were listed with a realtor on the open market).

<sup>33</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

<sup>34</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 3 (Oregon Tax Court 2012).

neighborhood; unadjusted sale prices in 2008, 2009, and 2010, ranged from \$335,000 to \$452,000. It is not clear which, if any, of those sales were foreclosures or short sales. Plaintiffs' purchase of the subject property for \$295,000 in May 2009 is the lowest sale price identified for any of the years, 2003 through 2011. "Usually, one sale does not make a market." *Truitt Brothers, Inc. v. Dept. of Rev.*, 302 Or 603, 609, 732 P2d 497 (1987).<sup>35</sup>

The Oregon Tax Court has also considered three Oregon Department of Revenue directives issued to county assessors in 2009 and 2010 regarding consideration of distressed transactions for purposes of the sales comparison approach and ratio studies.<sup>36</sup> For instance, in *Brashnyk v. Lane County Assessor*, the Oregon Tax Court addressed whether bank sales were valid indicators of market value and quoted the Oregon Department of Revenue's memorandum entitled "Valid Market Sales for Oregon Assessment Purposes" issued to county assessors on January 21, 2009:

'[s]o long as the nominal standards for an acceptable comparable sale are met – arm's length, voluntary, knowledgeable parties, exposure to the market, cash equivalent, etc. – such [bank] sales are appropriate to consider. Under the market value definition standard, any sale that meets those criteria should be considered as a potential comparable.'<sup>37</sup>

In *Voronaeff v. Crook County Assessor*, the Oregon Tax Court addressed whether short sales were valid indicators of market value and quoted the Oregon Department of Revenue's memorandum entitled "Valid Market Sales for Oregon Assessment Purposes" issued to county assessors on January 21, 2009:

'[Short sales] should be carefully reviewed to determine if they meet the relevant criteria for a comparable. The mere fact that there is, presumably, some duress on the part of the seller (the upside down owner) that prompts the sale, does not itself disqualify the transaction from consideration, especially when there is some duress in the market. This situation is analogous to the owner losing his job and selling because he can't make the mortgage payments. *We wouldn't discount that sale simply because the owner was very motivated to sell* (some duress) so long as the sale was an arm's-length with adequate exposure and contained no unusual financing terms or elements that couldn't be adjusted out.'<sup>38</sup>

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<sup>35</sup> *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

<sup>36</sup> *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011); *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 8-9 (Oregon Tax Court 2012).

<sup>37</sup> *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011).

<sup>38</sup> *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 9 (Oregon Tax Court 2012). [Emphasis in original Memorandum.]

In *Voronaeff v. Crook County Assessor*, the Oregon Tax Court also included the following excerpt from a letter from the Oregon Department of Revenue to the Crook County Assessor dated February 1, 2010:

‘We recommend you analyze all sales, foreclosure, short or otherwise, and determine if they represent market conditions. If elements of a particular sale raise reasonable doubt that the sale doesn’t represent the market, prevailing wisdom suggests eliminating that sale in the market value study. However, in a declining market, foreclosures and short sales are common and in many cases can and should be used in market value studies. *If, in your opinion, the current economics and market conditions, as of the valuation date, indicate some level of distress is a common market characteristic, it is appropriate to include such sales in a comparable sale’s value analysis or a ratio study.*’<sup>39</sup>

The Nebraska Department of Revenue Property Assessment Division’s Sales File Practice Manuals for the beginning of the economic crisis in tax year 2008 through tax year 2011 do not address circumstances where foreclosures or short sales could be reliable indicators of market value. Nebraska’s Sales File Practice Manual for tax year 2012, however, states as follows:

A deed transfer in lieu of foreclosure is a deed that is transferring the real property back to the original owner prior to the property being foreclosed on and should be considered a non-arm’s length transaction.

A sale in which a lien holder is the buyer may be in lieu of a foreclosure or a judgment and the sale price may equal the loan balance only.

In a market where foreclosure properties are abundant, buyers may have comparable foreclosure properties to choose over conventional listings. Weak economic conditions in an area may cause the general residential and commercial market to meet the market of the foreclosure property resales, making foreclosures valid indicators of market value for non foreclosure properties.<sup>40</sup>

Nebraska’s 2011 and 2012 Sales File Practice Manuals also state as follows with respect to consideration of sales from banks for purposes of determining whether such a transaction is arm’s-length:

Sales from banks should not be automatically considered a non-arm’s-length transaction especially if you do not have an abundant supply of sales. Typically, values will be on the low end of the value range, but they

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<sup>39</sup> *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at pgs. 8-9 (Oregon Tax Court 2012). [Emphasis in original Letter.]

<sup>40</sup> 2012 Statewide Equalization Exhibit 107, p. 31.

may be considered arm's length transactions and included in the ratio study if all other criteria for being an open market arm's-length transaction are met.<sup>41</sup>

While it is unclear whether distressed transactions constituted the market and thereby were valid indicators of market value for purposes of tax year 2012, the Taxpayer also asserted that the January 2012 purchase price is a strong indicator of actual value in part due to the substantial amount of time (over a year) that the Subject Property was exposed on the open market. For purposes of analyzing this assertion, I am mindful that “[s]ale price is not synonymous with actual value or fair market value.”<sup>42</sup> I also note, however, that the Nebraska Supreme Court stated as follows in *Potts v. Board of Equalization of Hamilton County*: “where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.”<sup>43</sup> Additionally, as noted above, in *In re Estate of Craven* the Nebraska Supreme 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>44</sup> I further note that the Nebraska Supreme Court has held that a “single sale may in some instances provide evidence of market value.”<sup>45</sup>

The Oregon Tax Court has considered the amount of open market exposure necessary to constitute an arm's length transaction. For instance, in *Bennett Family Trust v. Deschutes County Assessor*, the Court stated as follows in finding that the sale price of bank-owned property listed on the open market for over two years reflected actual value:

If a property has been marketed for a sufficiently long period of time, and properly exposed to the market, etc., the implication of distress on the part of the seller is removed and a bank sale may be found to be arm's-length. *Ward v. Dept. of Revenue (Ward)*, 293 Or 506, 508, 650 P2d 923 (1982). The courts have found that a marketing period of between one and two years is sufficiently long. *Id.* (bank acquired property in 1976, taxpayer agreed to purchase in January 1978, and taxpayer completed purchase in June 1978); *Ernst Brothers Corp. v. Dept. of Rev. (Ernst Bros.)*, 320 Or 294, 305, 882 P2d 591 (1994) (18 month marketing

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<sup>41</sup> 2011 Statewide Equalization Exhibit 107, p. 117; 2012 Statewide Equalization Exhibit 107, p. 32.

<sup>42</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

<sup>43</sup> *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

<sup>44</sup> *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (2011).

<sup>45</sup> *Firethorn Inv. v. Lancaster County Bd. Of Equalization*, 261 Neb. 231, 241, 622 N.W.2d 605, 612 (2001).

period sufficient where expert had testified that a one to five year marketing period was necessary).<sup>46</sup>

The County did not refute the Taxpayer's evidence indicating that the Subject Property was marketed for over a year. Therefore, based on the Nebraska Supreme Court's holdings in *Potts, In re Estate of Craven* and *Firethorn*, together with the Nebraska Property Assessment Division's Sales File Practice Manual guidance set forth above regarding distressed sales, I would find that the Taxpayer's \$200,000 purchase was a strong indicator of actual market value as of the assessment date of January 1, 2012. I note that while the case law discussed above from jurisdictions outside of Nebraska is not controlling, it is instructive for purposes of this finding.

In the case where it is determined that the County Board's determination was unreasonable or arbitrary as concluded in the majority opinion, the Commission must review the evidence and adopt the most reasonable estimate of actual value presented.<sup>47</sup> With respect to the best evidence of value as of the assessment date on January 1, 2012, the County did not refute the evidence that the Subject Property was marketed for more than a year during which time its listing price was decreased at least once. I also note that the reliability of the County's cost approach is limited in the case of older residential properties such as the Subject Property.<sup>48</sup>

Even assuming that the cost approach is a reliable indicator of value in this case, I note that County's Property Record Card indicates that the County Assessor's \$270,257 valuation relies on a positive upward depreciation adjustment in the amount of 25% for economic depreciation.<sup>49</sup> It is difficult to comprehend such a substantial positive depreciation adjustment in the aftermath of the 2008 economic crisis. Thus, I have significant concern whether the County sufficiently considered "current market conditions" in the aftermath of the economic crisis.

Based on the above analysis, together with all of the documents and statements submitted at the hearing, I would find that the best evidence of value in this case for tax year 2012 is \$182,072, which reflects an the Taxpayer's \$200,000 total purchase price in January 2012 less the tax year \$17,928 assessed value of the smaller parcel included in the transaction.

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<sup>46</sup> *Bennett Family Trust v. Deschutes County Assessor*, TC-MD No 120096C, at p. 8 (Oregon Tax Court 2012).

<sup>47</sup> See, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002); *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

<sup>48</sup> *Appraising Residential Properties*, 4<sup>th</sup> Edition, Appraisal Institute, 2007, at p. 260.

<sup>49</sup> E4:3.

#### IV. THE RULE OF 72

The County Board asserted that the County Assessor's proposed \$270,257 valuation for tax year 2012 is reasonable based on the Subject Property's \$150,000 sale price in June of 2001 and historical real estate appreciation rates. In support of this assertion, the County stated that \$150,000 compounded at 3.5% would grow to approximately \$399,000 over 10 years.

The method used by the County to arrive at \$399,000 is unclear. In contrast, under the "rule of 72," dividing 72 by a fixed compounded rate of return calculates the amount of time necessary for an asset to double in value.<sup>50</sup> For example, under the "rule of 72," a \$150,000 asset that appreciates at a 3.5% compounded annual rate of return will double in value to \$300,000 in 20.5 years.

The Property Record Card found at Exhibit 4 indicates that the Subject Property sold for \$150,000 in June of 2001, just prior to the events of September 11, 2001.<sup>51</sup> The County Assessor's proposed \$270,257 assessment for tax year 2012 nearly doubles the value of the Subject Property over an approximate 10 year period. Thus, the \$270,257 proposed assessment by the County Assessor reflects an increase significantly in excess of historical real estate appreciation rates from 2001 when the Subject Property sold for \$150,000 through and beyond the economic crisis. On the other hand, as indicated previously, the \$200,000 purchase price by the Taxpayer in January 2012 appears reasonable given historical rates of real estate appreciation, the events of September 11, 2001, and the 2008 economic crisis.<sup>52</sup>

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<sup>50</sup> See, *The Dictionary of Real Estate Appraisal*, 4<sup>th</sup> Edition, Appraisal Institute, 2002, at p. 253. Commissioner Salmon's opinion states that the Rule of 72 is not a commonly accepted mass appraisal technique. In response, I note that the Rule of 72 is a useful and commonly known shorthand method to calculate asset appreciation retrospectively and prospectively based on historical or projected rates of return. I assume that for this reason the Appraisal Institute determined that the Rule of 72 should be defined in *The Dictionary of Real Estate Appraisal*. I do not include Rule of 72 analysis herein to make the case that it is a commonly accepted mass appraisal technique, even though many appraisers use time value of money concepts like the Rule of 72 as a part of their every-day work. Rather, I include the analysis because the Rule of 72 is a useful tool to identify whether assessment trends are problematic.

<sup>51</sup> In response to comments contained in Commissioner Salmon's opinion regarding inflation, I note that the events of September 11, 2001 had significant economic ramifications, including perpetuation of a low interest rate environment and relatively low inflation since that time. As indicated in my Rule of 72 analysis, the Subject Property sold just prior to September 11, 2001, so the \$150,000 sale price does not reflect any adverse valuation impact relating to that historic day.

<sup>52</sup> Ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result (I do note, however, that the first-time homebuyer credit in effect from 2008 through mid-2010 was another federal initiative that artificially supported some real estate values for a period of time).

## V. CONCLUSION

Based on the above analysis, I would find that the Taxpayer has rebutted the presumption that the County Board faithfully performed its duties with sufficient and competent evidence on which to base its decision for tax year 2012, and that the Taxpayer has shown by clear and convincing evidence that the decision of the County Board was arbitrary or unreasonable. I would further find that the best evidence of value for the Subject Property for tax year 2012 is \$182,072. Therefore, I would find that the actual value of the Subject Property for tax year 2012 is \$182,072, and that the decision of the County Board should be vacated and reversed.

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Thomas D. Freimuth, Commissioner

### Commissioner Salmon,

#### I. Issues

Linda Rowe, the Taxpayer, is a Commercial County Appraiser for Douglas County, and licensed real estate agent, testified at the hearing.<sup>53</sup> She asserted that the sale price of the Subject Property on January 31, 2012, was the best evidence of the actual value of the Subject Property as of January 1, 2012. The sale of the Subject Property on January 31, 2012, included an adjacent parcel. In order to determine the actual value of the Subject Property, Rowe adopted the Sarpy County Assessor's opinion of value for the adjacent parcel and subtracted it from the sale price. Rowe further asserted that the indicated sale price should then be reduced by 4% to set the actual value of the Subject Property at 96% of value. She asserted the Reports and Opinion for Sarpy County Statewide Equalization for tax year 2012 indicated that the median level of assessment for residential properties in Sarpy County was 96%, and that the principle of equalization required that the Subject Property only be valued at 96% of actual value.

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<sup>53</sup> Rowe testified that she is not a licensed appraiser in Nebraska.

## **II. Valuation**

### **A. Facts and Assertions**

The Subject Property is located at 3210 Crystal Drive, Bellevue, NE.<sup>54</sup> The Subject Property is improved with a 2,252 square foot, ranch style, single family home and a pole building.<sup>55</sup> The rights associated with the Subject Property include access to Chris Lake located within the Subject Property's neighborhood. The County Assessor assigned the Subject Property to the RCB1 Neighborhood.<sup>56</sup>

Rowe asserted that the sale price was better evidence of the actual value of the Subject Property than the County Assessor's opinion of value because: (1) the January 31, 2012, transaction was arm's length; (2) the County Assessor's cost approach incorrectly listed a crawl space for the Subject Property; (3) the Subject Property has lake access but not lake frontage; (4) the Subject Property is unique and there are no true comparable properties; (5) unlike the other properties in the Subject Property's neighborhood, the Subject Property is not part of the SID; (6) she asserted the County Assessor incorrectly calculated the depreciation and appreciation for the Subject Property; and (7) she asserted that the Subject Property had a longer driveway than other properties in the market and that the driveway was gravel unlike other properties in the neighborhood.

Tim Ederer, a Sarpy County Appraiser responsible for rural residential and residential lake properties in Sarpy County testified at the hearing. Ederer asserted that: (1) the Subject Property was appropriately assigned to the RCB1 neighborhood; (2) the neighborhoods were determined following professionally accepted mass appraisal methods; (3) the Subject Property was valued using the cost approach with appropriately calculated physical, functional, and economic depreciation; (4) the Subject Property is not so unique that comparable properties were unavailable; (5) simple adjustments based on comparable sales within the RCB1 neighborhood indicated that the difference between lake access and lake frontage amounted to a \$25,000 reduction to the land component of the Subject Property; and (6) Rowe's calculation of the difference between lake access and lake frontage was an unreliable indicator.

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<sup>54</sup> E4:1.

<sup>55</sup> E4:2-3.

<sup>56</sup> E4:1.

## B. 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 Nebraska Supreme Court has consistently held that sales price is not synonymous with actual value.<sup>57</sup> Nebraska Statutes permit the county assessor to value the Subject Property using the sales comparison approach, cost approach, income approach, or any commonly accepted mass appraisal technique and define actual value.<sup>58</sup> A review of pertinent case law is instructive.

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<sup>57</sup> *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982); *Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992).

<sup>58</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

In *Novak v. Board of Equalization*, the Nebraska Supreme Court held that, “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 actual value of property for assessment purposes, and many other matters relevant to the actual value of property appear in the record and must be considered in connection with the purchase price to determine actual value.”<sup>59</sup> In *Collier v. County of Logan*, the Nebraska Supreme Court reaffirmed the position that sale price is not conclusive of actual value, and reasoned that the real issue is to arrive at actual value and not simply sales price.<sup>60</sup> Again in *Josten-Wilbert Vault Co. v. Board of Equalization*, the Nebraska Supreme Court held that evidence of sales price alone is not sufficient to establish the actual value of a property:

Evidence that a sale was made at a price different than the value for tax purposes is not sufficient competent evidence to overcome the presumption without proof of the character and circumstances of the sale.

...

While a sale price, in some circumstances, may be a very important factor in determining actual value or fair market value, it is only evidence to be considered along with other evidence. ‘Sale price’ is not synonymous with actual value or fair market value.<sup>61</sup>

In *Potts v. Board of Equalization of Hamilton County*, the Nebraska Supreme Court determined that in setting the actual value of the subject property the county assessor had not given enough weight to the location and desirability of the subject property and “too much emphasis ha[d] been placed upon reproduction costs and other elements.”<sup>62</sup> The Court then determined that the District Court had determined that the sale price was the actual value of the subject property in accordance with the Nebraska Statutes section §77-112 which at that time required that a purchase price be taken into consideration in determining the actual value of real

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<sup>59</sup> *Novak v. Board of Equalization*, 145 Neb. 664, 666, 17 N.W.2d 882, 883 (1945).

<sup>60</sup> *Collier v. County of Logan*, 169 Neb. 1, 8, 97 N.W.2d 879, 885 (1959).

<sup>61</sup> *Josten-Wilbert Vault Co. v. Board of Equalization*. 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965).

<sup>62</sup> 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982).

property in Nebraska.<sup>63</sup> The Court in *Potts* acknowledged that other jurisdictions had held that sale price equals actual value, but that Nebraska did not. The Court in *Potts* did not overturn its previous decisions, but additionally adopted language from the dissent in *Josten-Wilbert Vault Co. v. Board of Equalization*, which said, “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.”<sup>64</sup>

In *Dowd v. Board of Equalization*, the appellant asserted that the actual value of a hog farm operation which clearly delineated the value of any real property received as part of the sale was indicative of the actual value of the real property.<sup>65</sup> The county assessor testified that she had failed to consider the sale price of the subject property because she could not separate out the value of the real estate from the purchase price with any degree of certainty.<sup>66</sup> Instead she relied upon the cost approach for the subject property.<sup>67</sup> The appellant produced an expert who was able through empirical evidence to derive a reasonable value of the personal property included in the sale.<sup>68</sup> The Nebraska Supreme Court reviewed *Potts*, and stated that: “We realize that a taxpayer may not control the valuation of his or her property for tax purposes by assigning an arbitrary sale price to the real estate and to the personal property included in a purchase, nor is the actual sale price conclusive on the issue of value. Nevertheless, in this case it is difficult to ignore the portion of the total sale price represented by the value of a herd of hogs, the market price of which was as realistic and specific as the quotations for stocks, bonds, or commodities listed on recognized exchanges.”<sup>69</sup> The Court concluded that the County Board was arbitrary and unreasonable to fail to consider the sale under those circumstances.<sup>70</sup> The Court in *Dowd* was operating under a similar statutory scheme as *Potts*. In 1986 the applicable Nebraska Statutes, section 77-112, read “[A]ctual value of property for taxation shall mean and include the value of property for taxation that is ascertained by using the following formula where

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 47, 328 N.W.2d at 181 (citations omitted).

<sup>65</sup> 240 Neb. 437, 482 N.W.2d 583 (1992).

<sup>66</sup> *Id.* at 441-442, 482 N.W.2d at 586-587.

<sup>67</sup> *Id.* at 441-442, 482 N.W.2d at 586-587.

<sup>68</sup> *Id.* at 440-441, 482 N.W.2d at 586.

<sup>69</sup> 240 Neb. 437, 444, 482 N.W.2d 583, 589 (1992).

<sup>70</sup> *Id.*

applicable: (a) Earning capacity of the property; (b) relative location; (c) desirability and functional use; (d) reproduction cost less depreciation; (e) comparison with other properties of known or recognized value; (f) market value in the ordinary course of trade; and (g) existing zoning of the property.”<sup>71</sup>

Since the Court’s decision in *Dowd*, Nebraska Statutes section 77-112 has been revised by eleven separate bills.<sup>72</sup> By 1999, Nebraska Statutes section 77-112 (1) read:

Actual value for purposes of taxation shall mean 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: (a) Comparison with sales of real property of known or recognized value, taking into account location, zoning, and current functional use; (b) Earning capacity of the real property; and (c) Reproduction cost less depreciation.<sup>73</sup>

In *Cabela’s Inc. v. Cheyenne County Bd. Of Equalization*, the Nebraska Court of Appeals held that: “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”<sup>74</sup>

Nebraska Statutes section 77-112 now reads:

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 willing seller, both of whom are

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<sup>71</sup> *Id.* at 444, 482 N.W.2d at 588 (citing Neb. Rev. Stat. §77-112 (Reissued 1986)).

<sup>72</sup> Laws 1989, LB 361, § 3; Laws 1991, LB 404, § 1; Laws 1991, LB 320, § 1; Laws 1992, LB 1063, § 46; Laws 1992, Second Special Session, LB 1, § 45; Laws 1996, LB 934, § 1; Laws 1997, LB 270, § 4; Laws 1997, LB 342, § 1; Laws 2000, LB 968, § 23; Laws 2003, LB 292, § 4; Laws 2003, LB 295, § 1.

<sup>73</sup> Neb. Rev. Stat. §77-112(1) (Cum.Supp. 1998).

<sup>74</sup> 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

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 consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.<sup>75</sup>

These changes to Nebraska Statutes section 77-112 comport with current commonly accepted mass appraisal methods. “The terms *price*, *cost*, and *value* are used and defined carefully by appraisers.”<sup>76</sup> “The term price refers to the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transaction.”<sup>77</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>78</sup> Actual value is defined by Nebraska Statutes section 77-112 and means “the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market” and not the particular amount of a specific transaction.<sup>79</sup> The distinctions between *price* and *actual value* are meaningful. They acknowledge that circumstances and factors may effect a particular purchase price to such an extent that it is of limited value or irrelevant in determining the actual value of a property. Factors which tend to illustrate that a transaction is not an arm’s length transaction harm the credibility and relevance of a purchase price in determining the actual value of a subject property.

Changes in Nebraska Statutes section 77-112 since 1992 have removed the language requiring the purchase price of a property to be taken into consideration when determining the actual value of real property.<sup>80</sup> Regardless of the change in statute, the common law still requires that a purchase price be given strong consideration only if “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[.]”<sup>81</sup>

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<sup>75</sup> Neb. Rev. Stat. 77-112 (Reissued 2009).

<sup>76</sup> Appraisal Institute, *The Appraisal of Real Estate*, 13<sup>th</sup> Ed. (2008) at 21.

<sup>77</sup> *Id.*

<sup>78</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>79</sup> Neb. Rev. Stat. §77-112 (Reissued 2009).

<sup>80</sup> Neb. Rev. Stat. 77-112 (Reissue 2009).

<sup>81</sup> *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)).

The common law only requires that the Commission give the purchase price strong consideration.<sup>82</sup> An arm's length transaction is not conclusive of the actual value of the Subject Property.<sup>83</sup> When giving the sale consideration, the Commission may assign weight to the sale based upon the other evidence presented.<sup>84</sup> The mere fact that only a single sale is presented as evidence of actual value may be given weight by the trier of fact.<sup>85</sup> Given the current statutory scheme, which defines actual value as "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 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[,]"<sup>86</sup> this Commissioner concurs with the Nebraska Court of Appeals in *Cabela's Inc.*, "the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade."<sup>87</sup> The Commission finds this interpretation harmonious with current common law and statute.

In *In re Estate of Craven*, the residential property at issue had significant condition issues.<sup>88</sup> Testimony at trial indicated that animals had been allowed to urinate and defecate throughout the property, and that even after the carpets were removed the smell was unbearable and the floors and subfloors under the carpet were stained from the urine and feces.<sup>89</sup> Further, the appellee's only evidence of actual value was derived from a retroactive appraisal made after significant improvements had been made to the residence.<sup>90</sup> The appraisers based their opinion of the condition of the property on notes from another appraiser who inspected the property prior to significant remodeling.<sup>91</sup>

In *Craven*, there was specific testimony given under oath by individuals with personal knowledge that all parties to the transaction were willing participants and acting with the

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001)(Citations Omitted) ("Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.").

<sup>86</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>87</sup> *Cabela's Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

<sup>88</sup> *Id.* at 124-125, 794 N.W.2d at 408-409.

<sup>89</sup> *Id.* at 124-125, 794 N.W.2d at 408-409.

<sup>90</sup> *Id.* at 126, 794 N.W.2d at 409.

<sup>91</sup> *Id.*

objective of maximizing their financial positions.<sup>92</sup> The Supreme Court held that an auction price is admissible evidence and *may* be taken into consideration.<sup>93</sup> The Supreme Court held that under some conditions the auction price may be better evidence of sale price than appraisal evidence.<sup>94</sup> The Supreme Court reasoned that the deficiencies in the property caused there to be “no truly comparable properties in the area[.]”<sup>95</sup> The Supreme Court also held that sales price or auction price is not always the best evidence of value, and that each determination must be made on a case by case basis.<sup>96</sup> The Court focused on the lack of truly comparable properties in the market, and the exceptionally horrible condition of the subject property.<sup>97</sup> The Court reasoned that the appraiser’s opinion that the seller had received a good deal was not clear and convincing evidence that the District Court was arbitrary or capricious given the other relevant facts of the case.

### **C. Analysis**

This Commissioner has reviewed the specific facts of this case and decides that in the current case that the sales price is not the best evidence of the actual value of the Subject Property because: (1) this Commissioner would find that the Subject Property is appropriately included in the RCB1 neighborhood; (2) there are sufficient comparable properties; (3) the Subject Property’s characteristics and deficiencies are reasonably quantifiable given market data; (4) market data indicates that the only impact of the recession on the actual value of the Subject Property was a slowdown in the rate of appreciation and no resulting economic depreciation; (5) sales within the Subject Property’s neighborhood indicate that the sale price is likely not the most probable price the Subject Property would bring on the open market; and (6) the conditions of the sale indicate that the seller was possibly operating under duress or at least not attempting to maximize her financial position.

#### **1. The Subject Property’s Market Area**

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 128, 794 N.W.2d at 410.

<sup>94</sup> *Id.* at 128, 794 N.W.2d at 411.

<sup>95</sup> *Id.* at 129, 794 N.W.2d at 410.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 128-30, 794 N.W.2d at 409-11.

Rowe asserted that the Subject Property was not comparable to most of the properties in the RCB1 neighborhood because most of the properties in the neighborhood had lake frontage while the Subject Property only had lake access. Additionally, Rowe asserted that the Subject Property was not included in the SID with the other properties in the neighborhood, and that this required her to remove her own snow from her access street/driveway and necessitated a septic tank instead of sewer line hook up. Rowe testified that at the time of purchase she knew the Subject Property was not located in the SID, but she did not adjust her offer based on this characteristic.

Ederer indicated that while there were more properties with lake frontage than lake access without lake frontage in the RCB1 neighborhood, there were sufficient properties located off the lake to calculate the impact of lake frontage and make appropriate adjustments to the actual value of the Subject Property. Ederer further asserted that the Subject Property was unlike the rural residential properties without any type of lake access. Ederer testified that he ran professionally accepted models to determine the appropriate neighborhood for the Subject Property and the appropriate size of the neighborhoods. Ederer indicated that all of these calculations and facts supported the inclusion of the Subject Property in the RCB1 neighborhood.

This Commissioner would find that Ederer's testimony that the exclusion of the Subject Property from the SID did not make it so unique as to be uncomparable with the other properties in the neighborhood is supported by Rowe's testimony. Rowe, an experienced real estate agent and employee of a county assessor's office, did not adjust her offer for any characteristics associated with exclusion from the SID.

This Commissioner would find that the Subject Property is not so unique that there are not comparable properties in the neighborhood. The testimony and evidence indicated that there were other similarly situated properties in the neighborhood, and that sufficient sales exist to determine the difference between lake frontage and lake access.

## **2. Cost Approach**

Ederer used the cost approach to value the Subject Property. The cost approach is useful for valuing unique improvements where the actual value of the land component is easily determined using the sales comparison approach.<sup>98</sup> Rowe accepted the County Assessor's determination of the land value for the Subject Property.

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<sup>98</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 382-385 (13th ed. 2008).

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.<sup>99</sup>

Ederer testified that his cost approach incorrectly listed the Subject Property as having a crawl space instead of a concrete slab.<sup>100</sup> A concrete slab instead of a crawl space would result in a reduction to the replacement cost new of \$2.64 per square foot.<sup>101</sup> When the cost approach is reduced for this mistake, the cost approach indicates that the actual value of the Subject Property is \$263,334.

Ederer calculated the physical depreciation by examining sales of residential properties in Sarpy County, and assigned the Subject Property a 16% physical depreciation.<sup>102</sup> Ederer's method for determining the physical depreciation for the Subject Property is a professionally accepted technique.<sup>103</sup> Additionally, Ederer determined that the Subject Property was subject to a 25% economic appreciation. The economic appreciation is determined by comparing the depreciated replacement cost new of properties with the RCB1 neighborhood with their qualified sales price within the appropriate look back window. Ederer provided his sales roster for the

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<sup>99</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

<sup>100</sup> See, E4:2-3.

<sup>101</sup> See, E36:4.

<sup>102</sup> E4:3.

<sup>103</sup> International Association of Assessing Officers, *Property Assessment Valuation*, at 258-59 (3rd ed. 2010).

Subject Property's neighborhood.<sup>104</sup> This procedure for determining the economic appreciation was performed in accordance with professionally accepted techniques.<sup>105</sup>

An examination of the sales roster found at Exhibit 8, property valuations with economic depreciation listed in Exhibit 9, and the depreciation/appreciation factors applied by the County Assessor as shown in Exhibit 4 page 3 indicate that the depreciation was calculated according to professionally accepted techniques. Rowe asserted that the depreciation was incorrect, but did not offer a different opinion of the appropriate depreciation and did not explain why the depreciation was incorrect. Given the easily discernible depreciation factors, the cost approach was not subject to many of the concerns associated with this method.<sup>106</sup> Other than correcting the concrete slab, there are no other adjustments needed to the County Assessor's cost approach. Rowe had no other concerns with the use of the cost approach.

### **3. The Sale Price**

Rowe asserted that the sale price of the Subject Property on January 31, 2012, minus the actual value of the additional parcel included in the sale, was the best evidence of the actual value of the Subject Property. She asserted that the sale was arm's length. She asserted that the sale price was supported by a comparison of properties which sold with lake frontage and properties which sold with only lake access.

Ederer testified that the facts surrounding the sale of the Subject Property, and a comparison of sales within the Subject Property's neighborhood indicated that the sale price was not indicative of the actual value of the Subject Property.

An arm's length transaction is defined as: "A transaction between unrelated parties under no duress."<sup>107</sup> Further indications of an arm's length transaction are included in the statutory definition of actual value. The Commission must examine the circumstances and evidence

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<sup>104</sup> E8.

<sup>105</sup> International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 152-55 (1999).

<sup>106</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 382-385 (13th ed. 2008).

<sup>107</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 18 (4th ed. 2002).

surrounding a sale price to determine whether the sale price is competent evidence of actual value, and the weight to give the sale price when determining actual value.<sup>108</sup>

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.<sup>109</sup>

Under Nebraska law, actual value "is the most probable price" that a property would sell for and not the purchase price of a specific transaction.<sup>110</sup> When the evidence discloses that a sale was arm's length, the sale should be given strong consideration.<sup>111</sup> This Commissioner would find that evidence in this case indicates that the sale price is not the most probable price the Subject Property would sell for on the open market.

The previous owner obtained sole ownership of the Subject Property through a divorce decree in 2006.<sup>112</sup> The Subject Property and an additional parcel of property were listed on the open market for \$275,000 from July 13, 2010, until February 2, 2011.<sup>113</sup> The Subject Property and an additional parcel of property were placed back on the market on May 16, 2011, with an asking price of \$275,000.<sup>114</sup> On August 3, 2011, the owner lowered the listing price to \$220,000.<sup>115</sup> In October 1, 2011, the Rowe signed a contract to purchase the Subject Property and an additional parcel of property for \$200,000. Rowe testified that the asking price as of October 1, 2011, was \$200,000. Rowe purchased the Subject Property and an additional parcel of property on January 31, 2012.<sup>116</sup>

The precipitous and sudden decline in asking price concerns this Commissioner. While Rowe was able to testify that she was a willing buyer, under no duress, and seeking to maximize

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<sup>108</sup> See, *Dowd v. Board of Equalization of Boone County*, 482 N.W.2d 583, 240 Neb. 437 (1992). See also, *Craven v. Union Bank and Trust Company*, 281 Neb. 122, 794 N.W.2d 406 (2011).

<sup>109</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>110</sup> See, *Cabela's Inc. v. Cheyenne County Bd. Of Equalization*, 8 Neb.App. 582, 591, 597 N.W.2d 623, 632 (1999) (citations omitted).

<sup>111</sup> See, *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 328 N.W.2d 175 (1982).

<sup>112</sup> See, E16:2.

<sup>113</sup> E28:3.

<sup>114</sup> E28:4.

<sup>115</sup> E28:4.

<sup>116</sup> E4:1.

her financial position in the transaction, no evidence was presented by anyone with personal knowledge that the same was true for the seller. The conditions surrounding the sale of the Subject Property make this Commissioner cautious in adopting the sale price as the best evidence of the actual value.

Rowe asserted that a comparison of properties with lake frontage to properties with only lake access indicated that the properties with only lake access were worth \$100,000 to \$150,000 less on the open market. Rowe supplied the Commission with a spreadsheet showing her comparison.<sup>117</sup> Rowe compared the sale price of Comp 1<sup>118</sup> with the sale price of Comp 2<sup>119</sup> and attributed the entire difference between the sale prices to the presence or absence of lake frontage.<sup>120</sup> Rowe provided the Commission with the property record cards for the properties used in the comparison.<sup>121</sup>

This Commissioner has reviewed the property record cards for Comp 1 and Comp 2 and notes that there are material differences between the two properties which would also impact the actual value of the alleged comparable properties including differences in: (1) size; (2) style; (3) exterior finish; (4) basement finish area; (5) number of baths; (6) presence of garage attached to Comp 2 and no garage for Comp 1; (7) number of plumbing fixtures; and (8) effective age/year of construction.<sup>122</sup> This Commissioner would find that without controlling for these differences, Rowe's comparison is not probative of the actual value of the Subject Property.

Rowe also provided MLS listings for alleged comparable properties located in Beaver Lake Subdivision in Cass County.<sup>123</sup> Rowe asserted that these alleged comparable properties also constituted properties with and without lake frontage, and a comparison of sales prices of properties with lake frontage to properties with only lake access further supported the sale price. This Commissioner notes that the Commission's Order and Notice for Hearing requires parties to submit property record cards for all alleged comparable properties. Rowe did not submit any

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<sup>117</sup> E25:1.

<sup>118</sup> "Comp 1" was identified on the record as the alleged comparable property located at 12301 Buffalo Road.

<sup>119</sup> "Comp 2" was identified on the record as the alleged comparable property located at 12605 North Shore.

<sup>120</sup> Rowe also listed a third alleged comparable property on E25:1. "Comp 3" was identified on the record as the alleged comparable property located at 12407 Cottonwood Ln. Rowe testified that her purpose for including Comp 3 was to provide a general idea of the level of value of properties with various access to lakes and rivers.

<sup>121</sup> The property record card and MLS listings for Comp 1 are found in E29-30. The property record card and MLS listings for Comp 2 are found in E31-32. The property record card and MLS listings for Comp 3 are found in E33-34.

<sup>122</sup> See, E29-32.

<sup>123</sup> E35:40-48.

property record cards for the alleged comparable properties located in Beaver Lake Subdivision in Cass County.<sup>124</sup>

Further, Ederer testified that the Beaver Lake Subdivision in Cass County was not similar to the Subject Property's neighborhood. Specifically, Ederer asserted that the ratio of properties without lake frontage to properties with lake frontage was much greater creating a scarcity of properties in the Beaver Lake subdivision with lake frontage thus subjecting the properties at Beaver Lake and those in RCB1 to different market factors. Ederer testified that because the market was different, the sales in Beaver Lake were not good evidence of the actual value of the Subject Property. Rowe offered no evidence to rebut these assertions.

This Commissioner agrees that due to market differences, sales from Beaver Lake are not comparable to RCB1.

Additionally, Ederer provided the Commission with a sales roster from the look back window in Exhibit 8. He further provided property record cards from two comparable sales located within the RCB1 neighborhood.<sup>125</sup> These two alleged comparable properties were purchased around the same time as the Subject Property. Ederer testified that he provided these two alleged comparable properties to illustrate that \$200,000 was too low for the Subject Property. Rowe testified that the sale of the alleged comparable in Exhibit 36 was not an arm's length transaction because the owner of a property across the street purchased it because of its proximity to his property and out of a need for additional parking.

After reviewing all the evidence, this Commissioner does not find that the sale price of the Subject Property is more convincing than the County Assessor's opinion of value after adjustment for the slab.

#### **4. Recession Impact**

Rowe asserted that the actual value of the Subject Property had been affected by a national economic slowdown, and that the actual value of the Subject Property decreased because of this slowdown. It has been asserted that even if the sale of the Subject Property was the result of a

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<sup>124</sup> E35:40-48.

<sup>125</sup> See, E36-37.

distressed sale and not arm's length it would still be the best evidence of value given the economic climate in 2012.

Ederer testified that he tracks the market each year, and that economic depreciation is calculated each year based upon actual arm's length transactions in the market. Ederer testified that in Sarpy County the recession decreased the amount of yearly appreciation for some properties, and resulted in depreciation for others. Ederer testified that the market data did not indicate any economic depreciation attributable to the RCB1 neighborhood. Further, the cost approach uses market data to determine the replacement cost new of improvements, and a sales comparison approach to determine the actual value of the land component.

Because the methods of valuing property rely on market data, the specific impact on the Subject Property's market caused by the recession would already be factored in. There is no evidence in the record before the Commission that the County Assessor failed to take into account local market factors.

Global or national economic crises may affect a local market to greater or lesser extent than the global or national economy. It is possible for a local market to excel during a time of national or global economic crisis, and it is possible for a local market to fail abysmally in a time of great economic boon. The assessment of real property is concerned with the market in which the Subject Property operates.<sup>126</sup> "A real estate market is created by the interaction of individuals who exchange real property rights for other assets such as money. Specific real estate markets are defined on the basis of various attributes: property type, location, income-producing potential, typical investor characteristics, typical tenant characteristics, and other attributes recognized by those participating in the exchange of real property."<sup>127</sup> The specific real estate market in which the Subject Property would operate is the only market which is relevant in determining the actual value of the Subject Property.

Further, a single non-arm's length transaction is not competent evidence of actual value under Nebraska Law.<sup>128</sup>

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<sup>126</sup> The Appraisal Institute, *The Appraisal of Real Estate*, at 21 (13th ed 2008).

<sup>127</sup> *Id.*

<sup>128</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009); See also, *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 417, 138 N.W.2d 641, 643 (1965); *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 46, 328 N.W.2d 175, 180 (1982);

## 5. The Rule of 72

Commissioner Freimuth asserts that the rule of 72 supports the assertion that the County Assessor's cost approach is not a correct value for the Subject Property. The rule of 72 is defined as:

[a] rule of thumb for calculating the number of years it will take for a deposit in a fixed interest bearing account to double, i.e, divided 72 by the rate of interest being paid on the deposit; thus, if a time deposit is earning 8% annual interest, it will take nine years for the deposit to double.<sup>129</sup>

The rule of 72 is not a professionally accepted method for determining the actual value of real property, but as the definition indicates, is a mathematical rule dealing specifically with interest bearing accounts. An investment in real estate is not the same as an investment in an interest bearing account: (1) there is not a fixed rate of return each year for real estate; (2) inflation affects the prices of real estate but not the amount of time it takes for a deposit to double in an interest bearing account; and (3) market factors such as supply and demand drive a somewhat cyclical real estate system.<sup>130</sup> When determining whether to invest in an interest bearing account or real estate, an investor may compare the amount of time it would take for his investment to double in the interest bearing account and the amount of time it is expected to take for his real estate investment to double, but the rule of 72 is irrelevant to determining the value of real estate.

Further, use of the rule of 72 in this context would require accepting that the sale of the Subject Property in 2001 was an arm's length transaction for the actual value of the Subject Property, without any specific evidence establishing these positions. To the contrary, at the hearing Ederer testified that the seller in that transaction had a very poor reputation in the real estate business, and that its behavior had prompted many people within the business to cease dealing with them. Again, the application of the rule of 72 would also not take into account inflation over the last 11 years, or the actual market conditions for the Subject Property. Finally, Commissioner Freimuth utilized a 3.5% rate of return in his calculation of the rule of 72 with no

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*Dowd v. Board of Equalization*, 240 Neb. 437, 482 N.W.2d 583 (1992); *Craven v. Union Bank and Trust Company*, 281 Neb. 122, 794 N.W.2d 406 (2011).

<sup>129</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 253 (4th ed. 2002).

<sup>130</sup> The Appraisal Institute, *The Appraisal of Real Estate*, at 51-63 (13th ed 2008).

basis or evidence of 3.5% representing the actual rate of return on real estate over the last decade.

This Commissioner finds the rule of 72 irrelevant to determining the actual value of the Subject Property.

#### **D. Conclusion**

This Commissioner would find that Ederer's cost approach after an adjustment indicating the impact of a concrete slab foundation is the best evidence of the actual value of the Subject Property for tax year 2012. This Commissioner would find that the actual value of the Subject Property is \$263,334.

### **III. Equalization**

#### **A. Facts and Assertions**

Rowe asserted that after a determination of the actual value for the Subject Property, that the principle of equalization required that the assessed value be set at 96% because the Reports and Opinions from Statewide Equalization for tax year 2012 indicated that the median assessed to sales ratio for residential properties was 96% Rowe asserted that this is a professionally accepted mass appraisal practice that occurs in Douglas County.

Ederer testified that the median which was derived in the Reports and Opinions from Statewide Equalization for tax year 2012 only indicated that of residential properties which sold in Sarpy County during the look back period half of the properties had an assessed to sales ratio over 96% and half had an assessed to sales ratio under 96% .

#### **B. 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>131</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>132</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

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<sup>131</sup> *Neb. Const.*, Art. VIII, §1.

<sup>132</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

tax.<sup>133</sup> 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>134</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>135</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>136</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>137</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>138</sup>

### C. Analysis

Equalization may be accomplished by comparing the ratio of assessed values to actual values of properties and then setting the subject property to lowest ratio.<sup>139</sup>

In the assessment process there are several distinct components.<sup>140</sup> These components of a mass appraisal system are defined as: (1) Data management system; (2) Valuation system; (3) Performance analysis system; (4) Administrative/support system; and (5) Appeals system.<sup>141</sup>

The valuation of real property is a distinct procedure performed by the valuation system.<sup>142</sup> In Nebraska, county assessors are permitted to use professionally accepted mass appraisal methods to determine the actual value of real property subject to ad valorem taxes.<sup>143</sup> After an

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<sup>133</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>134</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>135</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>136</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>137</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>138</sup> *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

<sup>139</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>140</sup> International Association of Assessing Officers, *Mass Appraisal of Real Property*, at 30-34 (1999).

<sup>141</sup> *Id.* at 31.

<sup>142</sup> *Id.* at 31-32.

<sup>143</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

assessor determines the actual value of real property through a professionally accepted mass appraisal method within the valuation system, the assessor may then move to a separate procedure of performance analysis.

There are several methods of performance analysis.<sup>144</sup> However, ratio studies “generally provide the best available measures of appraisal performance and are a valuable tool for evaluating appraisal results, identifying reappraisal priorities, adjusting valuation to the market, and assisting management in planning and scheduling.”<sup>145</sup>

In addition to performance analysis conducted by the individual assessor, Nebraska Statutes require an independent review and performance analysis of the assessment of real property in all counties by the Commission annually.<sup>146</sup> This performance analysis is generally known as statewide equalization. Prior to the creation of the Commission, this function was performed by the State Board of Equalization and Assessment.<sup>147</sup> Concerning this function, the Nebraska Supreme Court stated that the function was created to establish uniformity between all the counties within Nebraska.<sup>148</sup> As part of the statewide equalization process, the Property Assessment Division of the Department of Revenue (PAD) conducts ratio studies for all of the market areas defined by the county assessor for each county.

The Commission analyzes the performance of each valuation model by county and market area for all 93 counties, and determines whether an increase or decrease of the value of a class or subclass of property is warranted in order to ensure that all counties in Nebraska fall within acceptable statistical ranges.<sup>149</sup> This performance analysis derives the ratio of assessed values to sale prices for properties within the classes and subclasses of properties in each county for purposes of ensuring equalization between counties. The macro performance analysis conducted for purposes of statewide equalization is only an indicator of the level of assessment for the classes and subclasses within a county and is not an appropriate substitute for micro-level comparison.

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<sup>144</sup> *Mass Appraisal of Real Property*, IAAO (1999) at 31.

<sup>145</sup> *Id.* at 33.

<sup>146</sup> Neb. Rev. Stat. §77-5022 (Reissue 2009).

<sup>147</sup> *Hanna v. State Board of Equalization and Assessment*, 181 Neb. 725, 150 N.W.2d 878 (1967).

<sup>148</sup> *Id.*

<sup>149</sup> Neb. Rev. Stat. §77-5022(1) (Reissue 2009).

This Commissioner would find that it would be inappropriate to substitute a ratio of assessed values to sales prices for a ratio of assessed values to actual values.

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Nancy J. Salmon, Commissioner