

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

David W. Dibben
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case Nos.: 10R-124 and 11R-278

Decision Reversing
County Board of Equalization

BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential rental parcel improved with a 992 square foot dwelling parcel located at 3121North 59th Street, Omaha, Nebraska, with a legal description of Glenn Park; Lot 42, Block 1; 40x141.05.
2. The Douglas County Assessor assessed the Subject Property at \$57,100 for tax years 2010 and 2011.
3. David W. Dibben (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value of \$24,100 for tax year 2010 and \$30,000 for tax year 2011.
4. The County Board determined that the assessed value of the Subject Property was \$57,100 for tax years 2010 and 2011.
5. The Taxpayer appealed the determination 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 Commission’s hearing room, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. David W. Dibben, the Taxpayer, was present at the hearing.
8. Larry Thomsen, an employee of the Douglas County Assessor’s Office, and Thomas Barrett, Assistant Douglas County Attorney, were present for the County Board.

STANDARD OF REVIEW & GENERAL VALUATION LAW

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²
10. 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.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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.”⁴

11. 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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷
14. 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.⁸

GENERAL VALUATION BACKGROUND & ANALYSIS

15. The County Board submitted a separate Assessment Report for tax years 2010 and 2011 at the hearing. The Property Record Profile contained in the Assessment Reports sets forth the following four transactions involving the Subject Property under the “Sales Summary”: (1) Warranty Deed sale in the amount of \$24,100 on October 13, 2009; (2) Trust Deed transaction in the amount of \$49,075 on June 17, 2009; (3) Warranty Deed sale in the amount of \$64,000 on August 30, 2002; and (4) Deed sale in the amount of \$44,600 on July 8, 1997.
16. The Property Record Profile for the Subject Property indicates that the County Board’s \$57,100 determination for tax years 2010 and 2011 includes \$6,000 for land and \$51,100 for the improvement component.

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. § 77-112 (Reissue 2009).

17. The County's Assessment Reports indicate that the County Board's \$51,100 determination attributable to the Subject Property's improvement component for tax years 2010 and 2011 is based on a sales comparison approach mass appraisal model derived from market area arm's-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.⁹ The Assessment Reports for tax years 2010 and 2011 contain a document entitled "Market Calculation Detail" that sets forth the value assigned to each of the various mass appraisal model characteristics relating to the Subject Property's improvement.¹⁰
18. Larry Thomsen, an employee of the Douglas County Assessor's Office, indicated that sales in the "two-year look-back period" prior to each tax year are reviewed for purposes of constructing the County's model. For example, for tax year 2010, the County's model is derived from market area sales that occurred from July 1, 2007 to June 30, 2009. For tax year 2011, sales from July 1, 2008 to June 30, 2010 were utilized.
19. In terms of perspective regarding the Subject Property's market area, the Multiple Listing Service ("MLS") document submitted by the Taxpayer at the hearing states that the parcel is north of NW Radial Highway on 59th Street. The Property Record Profile indicates that the Subject Property is located in Neighborhood 41, Subdivision 13720, and is included on County map number 41-0448.
20. The Taxpayer asserted that his \$24,100 purchase price in October of 2009 reflects the actual value of the Subject Property for tax year 2010. In support of this assertion, he stated that he purchased the property in an arm's length transaction after it had been listed on the open market via the MLS system for approximately three months, and that the area real estate market was depressed in the aftermath of the economic crisis that began in 2007. The Taxpayer's testimony and documentation also indicate that this sale reflected the diminished condition of the Subject Property, including significant floor sloping stemming from foundation settling, general interior/exterior disrepair, and roof leakage.¹¹
21. The Taxpayer's testimony and documentation submitted at the hearing indicate that he paid \$5,400 to improve the Subject Property after the October 2009 purchase. These improvements included new vinyl siding, one window replacement, and completion of interior drywall work. Based on his \$5,400 cost of improvements subsequent to purchase, the Taxpayer asserted that the Subject Property's actual value for tax year 2011 was \$30,000.
22. Based on the reference dated January 20, 2010 regarding the Taxpayer's improvements that is contained in the "Account Notes" section of the County's 2010 Assessment Report, the Commission finds that the Taxpayer had improved the Subject Property as of January 1, 2010.
23. The Taxpayer's testimony and documentation indicate that the roof had not been replaced as of the date of the hearing before the Commission. The Taxpayer stated that the

⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

¹⁰ The County's 2011 Assessment report includes a revised Market Calculation Detail document based on an inspection of the Subject Property on February 11, 2011. This document adjusted several factors, including an increase in the condition rating from fair to average.¹⁰ The revised Market Calculation Detail document indicates an improvement value increase from \$51,100 to \$67,100. The Commission notes, however, that the County Board determined that the improvement value amounted to \$51,100 for tax years 2010 and 2011.

¹¹ The MLS document submitted by the Taxpayer stated that the Subject Property required interior renovation. It also stated as follows: "Bring your tool box!"

Subject Property's asbestos roof is difficult to replace, and that he had obtained a \$15,000 replacement estimate. He also presented photos taken a few days prior to the hearing showing that the asbestos roof remained, and he stated that replacement funding was not yet available. Thus, contrary to information contained in the County's Assessment Reports, the Commission finds that the Subject Property's roof had not been replaced by the Taxpayer for purposes of tax years 2010 and 2011.

24. The Taxpayer noted that the County mistakenly determined that he enclosed the front porch, and that this demonstrated in part that the Taxpayer had improved the Subject Property as of the January 1, 2010 assessment date. The Taxpayer stated that the porch was enclosed when he purchased the Subject Property, and that this enclosure actually reduced the value of the parcel. The Taxpayer submitted a 2002 picture that depicts the porch prior to enclosure, and he also referenced a photo contained on the MLS listing that shows enclosure. Thus, contrary to the assertions of the County, the Commission finds that the porch was enclosed when the Taxpayer purchased the Subject Property in 2009.

DISTRESSED SALES AS INDICATOR OF VALUE ANALYSIS

25. The Taxpayer submitted a Multiple Service Listing ("MLS") document to support his assertion that the \$24,100 purchase price is based on an arm's length transaction that reflects actual value for tax year 2010 and a basis for his \$30,000 opinion of value for tax year 2011. This document indicates that the Subject Property was listed for sale on the open market in the MLS system for \$25,900 on July 2, 2009. The MLS listing also indicates that the Subject Property remained for sale on the open market for 89 days.
26. The Property Record Profile contained in the County's Assessment Reports provides that the Taxpayer purchased the Subject Property from the Bank of New York on October 13, 2009. The Property Record Profile also provides that the Subject Property was subject to a Trust Deed sale in the amount of \$49,075 on June 17, 2009, which is indicative of a foreclosure transaction.
27. In support of his assertion that the October 2009 purchase price reflects actual value, the Taxpayer indicated that the area real estate market was depressed as a result of the economic crisis that began in 2007, and that distressed transactions constituted a significant portion of the market for tax year 2010 and 2011 purposes. In effect, the Taxpayer asserted that distressed transactions such as foreclosures, bank sales and short sales are valid indicators of value and should be considered by the County in its mass appraisal model that is based on market area sales and multiple regression analysis.
28. Mr. Thomsen of the County Assessor's Office asserted that the October 2009 sale price should not be an indicator of value because it did not stem from an arm's length transaction. Mr. Thomsen also indicated that the County Assessor's sales comparison approach 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.
29. *The Dictionary of Real Estate Appraisal* defines an arm's-length transaction as follows: "A transaction between unrelated parties under no duress."¹²

¹² *The Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute, 2002, at p. 18.

30. 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.”¹³
31. As indicated above in the Standard of Review & General Valuation Law section, 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.¹⁴

32. 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.”¹⁵
33. 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.¹⁶ 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.¹⁷ Additionally, in addressing mass appraisal techniques such as the sales comparison approach 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.¹⁸

34. Generally, jurisdictions outside of Nebraska have considered the impact of the economic crisis in terms of the use of sales comparison approach for property tax valuation purposes.¹⁹ For example, the Washington Board of Tax Appeals stated as follows in addressing the County Assessor’s four comparable sales used to value a commercial office building:

¹³ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 304.

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁵ *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

¹⁶ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

¹⁷ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

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

¹⁹ *Thomas Northlake, LLC v. Lloyd Hara, King County Assessor*, Docket No. 75238, at p. 5 (Washington Board of Tax Appeals 2012).

The four sales used in the Assessor's arguments have less than ideal "market condition" characteristics: one closed in mid-year 2006, one in mid-year 2007, one in the first-quarter of 2008, and one in mid-year 2008. Relying on the bracketing effect of the derived range of values (\$181 to \$306 per square foot of net rentable area), the Assessor makes no attempt to adjust for characteristics or for market conditions. The bracketing approach would be given more weight if at least some of the sale closings happened after the onset of the Great Recession. Since that is not the situation in this appeal, the Assessor's sales data are given less weight than would normally be the case.²⁰

35. With respect to whether distressed sales can be considered reliable indicators of market value, several courts have issued opinions in the aftermath of the economic crisis.²¹ For instance, in a case that involved consideration of the economic crisis for valuation purposes outside of the property tax context, the Illinois Appellate Court commented as follows regarding the validity of a distressed transaction as an indicator of value in affirming a lower court's approval of a \$300,000 judicial foreclosure sale of 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.²²

36. 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*.²³ 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

²⁰ *Thomas Northlake, LLC v. Lloyd Hara, King County Assessor*, Docket No. 75238, at 5 (Washington Board of Tax Appeals 2012).

²¹ *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).

²² *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Illinois Court of Appeals 2012).

²³ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

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."²⁴

37. 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 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).²⁵

38. 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.²⁶ 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:

²⁴ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 3 (Oregon Tax Court 2012).

²⁵ *Greene v. Benton County Assessor*, TC-MD 110687N, at p. 8 (Oregon Tax Court 2012).

²⁶ *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).

‘[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.’²⁷

39. 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.’²⁸

40. 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.*’²⁹

41. The Nebraska Department of Revenue Property Assessment Division’s Sales File Practice Manuals for tax years 2010 and 2011 do not address circumstances where foreclosures or short sales could be reliable indicators of market value. The 2011 Sales File Practice Manual does, however, state as follows with respect to consideration of sales from banks for purposes of determining whether such a transaction is arm’s-length:

²⁷ *Brashnyk v. Lane County Assessor*, TC-MD No 110308, at p. 9 (Oregon Tax Court 2011).

²⁸ *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at p. 9 (Oregon Tax Court 2012). [Emphasis in original Memorandum.]

²⁹ *Voronaeff v. Crook County Assessor*, TC-MD No 110361C, at pgs. 8-9 (Oregon Tax Court 2012). [Emphasis in original Letter.]

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 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.³⁰

42. The County's Assessment Report for 2011 states that comparables were limited "[d]ue to lack of sales."³¹ This comment raises the question whether foreclosures or otherwise distressed transactions constituted the market in the Subject Property's neighborhood for tax years 2010 and 2011. If so, the reliability of the County's mass appraisal model for purposes of determining actual value for tax years 2010 and 2011 is diminished.
43. The Taxpayer did not, however, provide analysis regarding the ratio of distressed sales to sales considered valid by the County in the market area. Therefore, it is unclear whether distressed transactions constituted either a significant portion or a majority of the total market area sales in the two-year periods preceding the assessment dates that were analyzed by the County for purposes of constructing its mass appraisal model for tax years 2010 and 2011.
44. In determining whether 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, the Commission is mindful that "[s]ale price is not synonymous with actual value or fair market value."³² The Commission is also mindful, however, that where the evidence indicates that the sale of the property was an arm's length transaction, the sale price should be given strong consideration.³³
45. The Commission further notes that the Nebraska Supreme Court recently 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.³⁴
46. Based on this Nebraska Supreme Court holding and the Nebraska Property Assessment Division's Sales File Practice Manual guidance set forth above regarding bank sales, the Commission finds that the Taxpayer's purchase involved an arm's length transaction and reflected actual market value as of October 13, 2009. In addition, while the case law discussed above from jurisdictions outside of Nebraska are not controlling, the Commission finds that they are instructive for purposes of this finding.

TAX YEARS 2010 & 2011 VALUE ANALYSIS

47. As stated previously, the Taxpayer asserted that his \$24,100 purchase price in October of 2009 reflects the actual value of the Subject Property for tax year 2010, and that the

³⁰ 2011 Statewide Equalization Exhibit 107, p. 117.

³¹ The Taxpayer asserted that the County's comparables included in its 2011 Assessment Report were not comparable to the Subject Property, in part because they had superior roofs and because the actual value of the Subject Property's was adversely affected by its diminished condition, including the significant sloping of its floors.

³² *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

³³ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

³⁴ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

\$5,400 he paid to improve the parcel thereafter supported his \$30,000 opinion of value for tax year 2011.

48. As also stated previously, based on the reference dated January 20, 2010 regarding improvements that is contained in the "Account Notes" section of the County's 2010 Assessment Report, the Commission finds that the Taxpayer had improved the Subject Property as of January 1, 2010. Therefore, while the Commission finds that the actual value of the Subject Property was \$24,100 as of October 13, 2009, the value for tax years 2010 and 2011 increased as a result of the Taxpayer's improvements, which included installation of vinyl siding, replacement of one window, and completion of interior drywall work
49. The Taxpayer stated that he had 16 years of experience in the residential rental market, and that he owned 11 properties in Omaha and one in Blair. The Taxpayer also stated that he purchased a similar rental property two blocks from the Subject Property for \$42,000 in approximately the second half of 2008, and that this property's roof did not need replacement. He also stated that this property was assessed in the approximate amount of \$50,000 at the time of the hearing.
50. Based on a review of all of the testimony and documentation submitted at the hearing, the Commission does not find clear and convincing evidence that Subject Property's increase in value for tax years 2010 and 2011 was limited to the Taxpayer's \$5,400 expenditure for the above-referenced improvements. Based on this review and the \$24,100 finding of actual value as of October 23, 2009, however, the Commission also finds that the County Board's \$57,100 determinations for tax years 2010 and 2011 are unreasonable or arbitrary.
51. In light of the findings above, the Commission finds that the best evidence of value supported by documentation for tax years 2010 and 2011 is \$44,600, which is the 1997 sale price of the Subject Property disclosed on the Property Record Profile. This amount is similar to the residential rental property located two blocks from the Subject Property that the Taxpayer purchased for \$42,000 in the last half of 2008, and which he stated was assessed at approximately \$50,000 as of the date of the hearing.³⁵ The Commission also notes that the 1997 sale price is a useful value indicator because the transaction preceded the aggressive marketing of sub-prime loans to low-income recipients and others in market areas similar to the area where the Subject Property is located.³⁶

CONCLUSION

52. 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.
53. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

³⁵ As indicated previously, the Taxpayer indicated that this property's roof is superior as compared to the Subject Property.

³⁶ It is this Commissioner's experience that the Subject Property's \$64,000 sale in August 2002 occurred at a time when sub-prime loans to low-income recipients and others were marketed aggressively. I also note that the August 2002 sale occurred when interest rates reached historic lows due to Federal Reserve actions in the aftermath of the severe 2000 – 2001 stock market crash and the events of September 11, 2001. Thus, in part because these factors fueled purchases that often exceeded actual value, I am not convinced that the August 2002 sale is the best evidence of value.

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 2010 and 2011 are vacated and reversed.
2. That the taxable value of the Subject Property for tax years 2010 and 2011 is:

| | |
|--------------|----------|
| Land | \$ 6,000 |
| Improvements | \$38,600 |
| Total | \$44,600 |

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.
6. This decision shall only be applicable to tax years 2010 and 2011.
7. This order is effective on October 23, 2013.

Signed and Sealed: October 23, 2013.

Thomas D. Freimuth, Commissioner