

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bellamini Prop., LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12C 773

Decision and Order Affirming the
Determination of the Douglas County Board
of Equalization

For the Appellant:

Michael Walz, Member, Bellamini Prop., LLC,
Pro Se.

For the Appellee:

Jimmie L. Pinkham III, Deputy
Douglas County Attorney.

This appeal was heard before Commissioners Nancy J. Salmon and Thomas D. Freimuth.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located at 1317 Park Avenue, Omaha, Douglas County, Nebraska. The parcel is improved with a 7,010 sq. ft., six-unit apartment complex. The Property Record File and legal description of the parcel are found at Exhibit 4.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$170,400 for tax year 2012. Bellamini Prop., LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$114,600. The County Board determined that the taxable value for tax year 2012 was \$170,400.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the 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 3, 2015.

¹ E1.

A majority of the Commission constitutes a quorum sufficient to transact business.² The Commission must deny relief “in any hearing or proceeding unless a majority of the Commissioners present determine that the relief should be granted.”³ A majority is defined as, “The greater number. The number greater than half of any total.”⁴ Commissioner Freimuth and Commissioner Salmon were present at the hearing and constituted a majority of the Commission, and, therefore, a quorum sufficient to transact business. A majority of the Commission has not determined that relief should be granted. The determination of the County Board is affirmed.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.⁵ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”⁶

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

² See, Neb. Rev. Stat. §77-5005(2) (2014 Cum. Supp.).

³ See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.).

⁴ *Black’s Law Dictionary 6th Edition*, West Group, p. 955 (1990).

⁵ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹¹

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹² The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁵

“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.”¹⁶ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁷ Taxable value is the percentage of actual value

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Id.*

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

B. Summary of the Evidence

Michael Walz, a Member of Bellamini Prop., LLC, testified that the assessed value of the Subject Property for tax year 2012 should be the same as tax years 2010 and 2011 at \$114,600.²¹ He expressed that his opinion of the value of the Subject Property as of January 1, 2012 was \$114,600. Walz testified that the Subject Property was remodeled during tax years 2010 and 2011, and was completed in 2011 just prior to 2012. As part of the remodeling Walz, reduced the Subject Property from twelve apartments to six apartments, replaced the heating and cooling system, installed some new electrical, modified the plumbing, updated fixtures, painted, carpeted, refinished the wood floors, and replaced the windows at a cost of about \$70,000 to \$75,000.

Walz testified that he purchased the Subject Property as part of a foreclosure in 2009.²² He testified that while the purchase price indicated \$188,000, the loan for the purchase of the Subject Property was modified by the bank in order to avoid reporting to the state that it had sold the Subject Property for less than the outstanding amount owed by the previous owner. Walz testified that in order to accomplish this the bank wrapped up other loans from additional properties on which Walz still owed, included money to remodel the Subject Property, and accepted the remainder for the Subject Property. Walz asserted that the Subject Property was worth \$40,000 to \$50,000 in 2009.

Walz testified that the top floor apartments with better views are listed for about \$1,000 per month, but that negative aspects of the Subject Property's neighborhood, including high crime, affected the ability to rent the units. Walz could not remember the actual vacancy rates of the Subject Property as of January 1, 2012.

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²¹ See, E4:18.

²² See also, E4:5.

Walz testified about the equalization comparable properties located in the County Assessor's Assessment Report.²³ Concerning the property at 1136 Park Avenue, Walz testified that he helped manage this property in 2009, and the 2009 purchase was a foreclosure purchase for \$115,000.²⁴ After the 2009 purchase the owner made some improvements to the Subject Property, and Walz oversaw some of the work. He stated that the improvements were minimal and intended to simply make it sellable. Walz testified that he had offered to buy the comparable property for \$120,000 just prior to the 2011 sale of \$154,000.

Concerning the comparable property at 1148 Park Avenue, Walz testified that the current owner overpaid for the Subject Property and gutted the Subject Property in order to remodel it. Concerning the comparable property located at 1124 Park Avenue, Walz asserted that he was contracted to purchase the property for \$160,000, but because of plumbing issues discovered during the inspection process he reduced his offer to \$120,000 and the owner sold it to another person. The property later sold for \$169,950.²⁵

The County Board did not put on a case in chief. However, the County Assessor's Assessment Report is in evidence.²⁶ The Assessment Report indicates that the Subject Property was valued using the income approach.²⁷ The account notes in the Assessment Report indicate that the assessed value for 2010 and 2011 was a partial value due to ongoing remodeling.²⁸

C. Valuation Analysis

While there was much testimony concerning the character of the neighborhood over the years, at issue is the actual value of the Subject Property as of January 1, 2012. Walz consistently asserted that the sales of comparable properties had exceeded the actual value of the comparable properties due to the inexperience of the buyers, and that he would have paid less. He also expressed his opinion that the actual value of the Subject Property was \$114,600.

The Commission finds that Walz's opinion does not amount to clear and convincing evidence of actual value. Walz testified that in 2011 he had made offers of \$120,000 each to purchase 1124 Park Avenue and 1136 Park Avenue, but the offers were rejected. 1124 Park

²³ See, E4:12.

²⁴ See, E4:26.

²⁵ See, E4:12.

²⁶ See, E4.

²⁷ See, E4:15-17.

²⁸ See, E4:9.

Avenue sold soon thereafter for \$169,950 and 1136 Park Avenue sold soon thereafter for \$154,000.²⁹ The County Assessor apparently qualified both sales as arm's length transactions.³⁰ No one presented specific evidence of the circumstances surrounding the sale of 1124 Park Avenue. Walz asserts that the buyers were simply not knowledgeable enough to know when they were getting bad deals. However, another characterization of the evidence would suggest that Walz simply undervalued the properties by approximately \$35,000 to \$50,000.

The County Assessor valued the Subject Property using the income approach, a professionally accepted method of determining the actual value of real property.³¹ Walz testified that he asked \$1,000 a month rent for units located on the top floors of the Subject Property, far exceeding the County Assessor's income factor of \$6 per square foot.³² Further, the account notes for the Subject Property indicate that assessed value for tax years 2010 and 2011 was a partial assessment due the ongoing remodeling of the Subject Property.³³

The Commission finds that the Taxpayer has not produced clear and convincing evidence that the County Board's determination, which relied upon the County Assessor's income approach, was unreasonable or arbitrary.

V. EQUALIZATION

A. Law

"Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."³⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁵ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.³⁶ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to

²⁹ See, E4:12.

³⁰ See, E4:12.

³¹ See, E4:15.

³² See, E4:15.

³³ See, E4:8.

³⁴ *Neb. Const.*, Art. VIII, §1.

³⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁶ *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).

market value for both the subject property and comparable property is required.³⁷ 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.³⁸ 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.³⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁰ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”⁴¹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁴²

At least two tests exist for determining if property within a taxing district is equalized: (1) does a comparison of the ratio of assessed to actual value indicate that properties are assessed at different levels of value;⁴³ and (2) are substantial similar properties valued at materially different levels of value.⁴⁴ Highly comparable properties are substantially similar and should be valued uniformly.⁴⁵

B. Evidence & Analysis

The testimony at the hearing indicates that the Subject Property is not substantially similar or highly comparable to the property located at 1136 Park Avenue whose value the County Board reduced during the 2012 tax year protests. 1136 Park Avenue has more units than the Subject Property.⁴⁶ Walz testified that from windows to floors, plumbing to electrical, and structural to aesthetic, the Subject Property has been recently renovated, but 1136 Park Avenue has not undergone the same renovations as the Subject Property. Conversely, Walz testified that he had performed part of the remodeling work after the purchase of the property at 1136 Park Avenue,

³⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁹ *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).

⁴⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴² *Id.* at 673, 94 N.W.2d at 50.

⁴³ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁴ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁵ See, *Zabawa v. Douglas County Board of Equalization*, 17 Neb.App. 221, 757 N.W.2d 522 (2008).

⁴⁶ See, E4:30.

and that remodeling had been limited and not as extensive as that done on the Subject Property. The Commission also notes that Walz testimony regarding 1136 Park Avenue was limited to his experience with the property prior to its sale in October of 2011. It is possible that the condition of the property has substantially changed since that time.

While the County Assessor's Assessment Report indicates that the assessed value of the property located at 1136 Park Avenue was originally derived using an income approach with identical factors applied to the Subject Property,⁴⁷ the Commission notes that the County Board reduced the assessed value of 1136 Park Avenue after protest.⁴⁸ No evidence was presented to explain the basis for the County Board's decision, and many potential reasonable explanations exist to explain why the two properties were treated differently. The County Board ultimately set the assessed value of 1136 Park Avenue at \$154,000, equal to its sale price.⁴⁹ Without specific evidence concerning the condition and character of 1136 Park Avenue as of January 1, 2012, the Commission cannot find that the County Board's determination for 1136 Park Avenue resulted in an assessed value different than actual value. In fact, the Commission is unable to determine if the County Board's determination for 1136 Park Avenue was supported by the County Assessor or based upon new evidence that would affect the factors contained in the income approach worksheet. In other words, the Commission finds there is not sufficient evidence to indicate that the County Board's determination resulted in an assessed value for 1136 Park Avenue below its actual value.

The Commission also notes that the other two equalization comparable properties located in the Assessment Packet were valued at similar per square foot values as the Subject Property, and do not indicate a lack of uniformity.⁵⁰

The facts in the current case are substantially different from the facts in *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999). In *Scribante*, the Court was dealing with a situation where there was a known and previously existing systematic failure to uniformly value properties within a specific neighborhood.⁵¹ It was readily apparent by the examination of a licensed appraiser of over 100 properties in the neighborhood that the County

⁴⁷ See, E4:15 (Subject Property's Income Approach Worksheet) and E4:31 (1136 Park Avenue Income Approach Worksheet).

⁴⁸ See, E4:32.

⁴⁹ See, E4:32.

⁵⁰ See, E4:12.

⁵¹ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 26-28, 588 N.W.2d 190, 192-193 (1999)

Assessor had failed to uniformly value the properties.⁵² Here there is no evidence of a systematic failure to assess properties uniformly and proportionately. Instead, the evidence consists of only three alleged comparable properties, one of which, 1136 Park Avenue, the Commission has concluded is not comparable to the Subject Property. The two remaining comparable properties are assessed at similar levels of value to the Subject Property.⁵³

Finally, the Taxpayer did not provide any ratios of the assessed values to the actual values for the Subject Property or any of the comparable properties. The Commission finds that there is not clear and convincing evidence that the valuation placed on the Subject Property is grossly excessive and is the result of systematic will or failure of a plain legal duty.

VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The Commission finds that there is not clear and convincing evidence that the valuation placed on the Subject Property is grossly excessive and is the result of systematic will or failure of a plain legal duty.

For all of the reasons set forth above, the County Board's determination is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.⁵⁴
2. The assessed value of the Subject Property for tax year 2012 is \$170,400.
3. This decision and order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

⁵² See, *Id.* at 28-32, 588 N.W.2d at 194-195.

⁵³ See, E4:12.

⁵⁴ 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.

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.
7. This decision and order is effective for purposes of appeal on May 8, 2015.

Signed and Sealed: May 8, 2015.

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

Commissioner Freimuth, dissenting,

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located at 1317 Park Avenue, Omaha, Douglas County, Nebraska. The parcel is improved with a 7,010 sq. ft., six-unit apartment complex. The Property Record File (“PRF”) and legal description of the parcel are found at Exhibit 4.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$170,400 for tax year 2012. Bellamini Prop., LLC (herein referred to as the “Taxpayer”) protested this assessment to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$114,600. The County Board determined that the taxable value for tax year 2012 was \$170,400.⁵⁵

III. VALUATION

A. Law

Under Nebraska law,

⁵⁵ E1.

[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.⁵⁶

“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.”⁵⁷ “Actual value, market value, and fair market value mean exactly the same thing.”⁵⁸ 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.⁵⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁶⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁶¹

B. Summary of the Valuation Evidence

Michael Walz, a Member of Bellamini Prop., LLC, the Taxpayer, testified at the hearing before the Commission. The Taxpayer did not offer an appraisal of the Subject Property or other documentary evidence at the hearing. Mr. Walz asserted that the Subject Property should be valued at \$114,600 for tax year 2012, which equals the 2010 and 2011 assessed value.

Other than cross examination of Mr. Walz, the County Board did not elicit witness testimony at the hearing before the Commission. The “Assessment Report” found at Exhibit 4 includes an income approach worksheet that contains the following market derived components to support the County Board’s determination that the actual value of the Subject Property amounted to \$170,400 on January 1, 2012: (1) potential gross income in the amount of \$42,060 (\$6 per sq. ft. rent times 7,010 sq. ft. living area); (2) 6% vacancy/collection rate; (3) 50% expense ratio amounting to \$19,768 in total expenses; and (4) 11.60% capitalization rate.⁶² The Assessment

⁵⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁵⁷ *Id.*

⁵⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁵⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁶⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

⁶¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

⁶² E4:15

Report also indicates that the Taxpayer did not provide income or expense information during the protest process before the County Board in 2012.⁶³

C. Valuation Analysis

Mass Appraisal of Real Property, published by the International Association of Assessing Officers, states that for purposes of mass appraisal and the income approach to valuation, “gross incomes, allowable expenses, net incomes, gross income multipliers, and overall rates can all be estimated in one of two basic ways: by developing typical per-unit values through stratification, often using spreadsheet software, or through statistical models.”⁶⁴ Additionally, to avoid reflecting differences in management, it is acceptable for an appraiser to use median vacancy, collection loss ratio and other income per unit when valuing a property.⁶⁵ Whether the appraiser uses actuals or estimated income/expense medians is “a matter of appraiser judgment” based upon whether the reported actual figures appear reasonable or typical when compared to the median figure for the model.⁶⁶

The County’s Assessment Report for the Subject Property submitted at the hearing before the Commission contains an income approach introductory page, which states as follows: “[t]he basic steps in the Income Approach to value for commercial properties in mass appraisal are based on a landlord-tenant situation and not on the income of the actual business. In using this approach, it eliminates the possibility of valuing management as opposed to potential income of the structure.”⁶⁷ The County’s Assessment Report also states as follows: “[r]esearch has been done by the Assessor to determine the typical rent by location, type of structure and the property use. The Douglas County Assessor’s office has also researched the typical landlord expenses, additional income based on the type of business, and vacancy and collection loss.”⁶⁸

Mass Appraisal of Real Property and the County’s Assessment Report state the basic concept that for purposes of ad valorem taxation of real property, only the value of the real property and not that value of the business which is attributable to individual management style or experience

⁶³ E4:17.

⁶⁴ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, at p. 132.

⁶⁵ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, at p. 158.

⁶⁶ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, at p. 158.

⁶⁷ E4:13.

⁶⁸ E4:13.

is to be valued. The use of estimated or “typical” income/expense figures instead of actual figures for each business is intended to prevent the inappropriate taxation of management.⁶⁹

The Taxpayer in this case did not report actual income or expense figures to the County Assessor prior to the valuation of the Subject Property by the County Board. Under these circumstances, it is appropriate for the County Assessor to value the Subject Property utilizing estimated income approach factors.⁷⁰

Because of these principles of mass appraisal, it is not enough to rebut the presumption in favor of the County Board for the Taxpayer to present evidence that there is a difference between the Subject Property’s actual figures and the estimates utilized by the County Assessor and adopted by the County Board in its determination. The Taxpayer must show something more in the form of clear and convincing evidence that the County Assessor inappropriately derived the estimated figures, or inappropriately included the Subject Property in a model comprised of incomparable properties, or any other error or calculation that evidences that the model or process utilized by the County Assessor and/or relied upon by the County Board determined the value of the Subject Property in such a way that the decision was “made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion”⁷¹ or evidences that there is “no room for differences of opinion among reasonable minds.”⁷²

It is an acceptable mass appraisal technique for the County Assessor to use either actuals or market derived medians under the income approach.⁷³ The Taxpayer did not provide actual income or expense information at the protest level before the County Board in 2012. At the hearing before the Commission, the Taxpayer did not present actual expense information, but Mr. Walz did state that the rental fee for each of the Subject Property’s six apartments amounted to \$1,000 monthly (\$6,000 per month x 12 months = \$72,000 vs. the County’s \$42,060 potential gross income noted above prior to application of a 6% vacancy/collection loss rate resulting in \$39,636 effective gross income).⁷⁴

⁶⁹ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, at p. 158.

⁷⁰ *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, at pgs. 158-159.

⁷¹ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted) (defining “arbitrary”).

⁷² See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999) (defining “unreasonable”).

⁷³ See, *Mass Appraisal of Real Property*, International Association of Assessing Officers, 1999, 158.

⁷⁴ See, E4:15.

The Taxpayer testified that the onset of the economic crisis in 2007 created an environment wherein extremely tight credit conditions and distressed or otherwise depressed transactions were a significant factor in the Subject Property's market area for tax year 2012 purposes. General guidance regarding consideration of the economic crisis by the County in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.⁷⁵ For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as vacancy factors and distressed sale rates as a part of developing and maintaining market area databases.⁷⁶ 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.**⁷⁷

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 Taxpayer 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. . . .

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,'

⁷⁵ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

⁷⁶ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

⁷⁷ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

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.⁷⁸

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.⁷⁹

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.⁸⁰

Especially in light of the current market conditions parameters discussed above, the \$154,000 sale of the comparable located at 1136 Park Avenue in October 2011 in the aftermath of the \$228,100 income approach valuation by the County Assessor and the County Board for tax year

⁷⁸ *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).

⁷⁹ *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

⁸⁰ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

2011 creates significant doubt regarding the validity of the income model used to assess the Subject Property for tax year 2012 (see Equalization Analysis below).⁸¹ Adding to this doubt, the County's Assessment Report for the Subject Property and the Assessment Reports for two other parcels owned by the Taxpayer in the general area of the Subject Property reference multiple sales in aftermath of the 2007 – 2008 economic crisis for amounts substantially less than assessed values and substantially less than inflated pre-crisis purchases stemming from an extremely loose lending environment.⁸² Based on all of the evidence submitted, however, I am not persuaded that the Taxpayer provided sufficient clear and convincing evidence that the County Board's \$170,400 determination of the actual value of the Subject Property for tax year 2012 is unreasonable or arbitrary.

IV. EQUALIZATION

A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”⁸³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁸⁴ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁸⁵ 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.⁸⁶ 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.⁸⁷ Taxpayers are

⁸¹ I note that the PRF for the County's comparable located at 1124 Park indicates that it sold for \$169,950 in April 2011 pursuant to a trustee deed, which indicates a transaction where the property transfer recorded reflects the amount of distressed debt rather than a true sale. I also note that the Taxpayer testified that the \$175,000 sale of the County's comparable located at 1148 Park in May 2011 involved an inexperienced buyer who overpaid under the then-current market conditions, which included a difficult history in terms of crime and extremely challenging tenant mix.

⁸² See, E4, E5, and E6 (the Commission held a consolidated hearing for three parcels owned by the Taxpayer, and these Exhibits set forth the County's Assessment Report for each respective parcel).

⁸³ *Neb. Const.*, Art. VIII, §1.

⁸⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁸⁵ *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).

⁸⁶ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁸⁷ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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.⁸⁸ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁸⁹ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”⁹⁰ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁹¹

“To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁹²

“Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”⁹³

The County Board fails to fulfill its “plain duty” to equalize property valuations by adjudicating tax protests of comparable properties in greatly disparate amounts.⁹⁴

B. Summary of the Equalization Evidence & Analysis

As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁹⁵ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value;⁹⁶ or (3) similar properties were assessed at materially different values due to

⁸⁸ *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).

⁸⁹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁹⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁹¹ *Id.* at 673, 94 N.W.2d at 50.

⁹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁹³ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁹⁴ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008) (“By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.”).

⁹⁵ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁹⁶ See, *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

misclassification of components of the Subject Property or similar components of other properties.⁹⁷

For equalization analysis purposes, the County Board’s Assessment Report contains Property Record Files (“PRF”) for three comparable sale properties on Park Avenue in close proximity to the Subject Property, which is located at 1317 Park Avenue.⁹⁸ Significantly, the County Board assessed its comparable property located at 1136 Park Avenue at \$154,000 for tax year 2012 in comparison to the Subject Property’s \$170,400 valuation, and the Assessment Report states that this \$154,000 valuation is not consistent with the County Assessor’s \$228,100 income approach valuation in evidence before the Commission.⁹⁹

As indicated above, the County Board fails to fulfill its “plain duty” to equalize property valuations by adjudicating tax protests of comparable properties in greatly disparate amounts.¹⁰⁰ Based on a review of the PRFs, photos and testimony relating to the Subject Property and the 1136 Park Avenue comparable, I would find that the parcels are similar in terms of location, appearance, age, use, quality, condition, and above-ground size (6,870 sq. ft. vs. Subject Property’s 7,010 sq. ft.). I also note that the parcels are both categorized by the County under “Occupancy” code 116, which is used for apartment buildings with four to eight units (the Subject Property has six apartment units, while the comparable has eight units).¹⁰¹

I recognize that the gross improvement component of 1136 Park Avenue is larger than the Subject Property because the comparable included a finished basement for tax year 2012 purposes (6,870 sq. ft. + 2,514 finished basement = 9,384 sq. ft. vs. Subject Property’s 7,010 sq. ft.). Consequently, analysis is required regarding the concept of economies of scale, whereby the

⁹⁷ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁹⁸ E4:12.

⁹⁹ See, E4:12(County’s comparable property chart), E4:17 (Assessment Report language stating that the \$154,000 assessment of the 1136 Park Avenue comparable for tax year 2012 is a County Board determination that is not consistent with the County Assessor’s \$228,100 income approach valuation set forth at page 31 of Exhibit 4), E4:26-30 (PRF for County comparable located at 1136 Park Avenue), E4:31 (Income Approach Worksheet for County comparable located at 1136 Park Avenue), and E4:32 (Property Valuation history - “PVAL” - for County comparable located at 1136 Park Avenue).

¹⁰⁰ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008) (“By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.”).

¹⁰¹ See, E4:5 – 6 (PRF for Subject Property), E4:26 – 28 (PRF for 1136 Park Avenue comparable), E4:12(County’s comparable property chart, which states that the Subject Property has six apartment units and the 1136 Park Avenue comparable has eight units).

per square foot value of a smaller property is often valued more than a larger property.¹⁰² Based on the identical income approach factors used by the County for the Subject Property and the comparable located at 1136 Park Avenue, I would find that size does not impact the per square foot value of the parcels under the County Assessor's model.¹⁰³

I further note that the valuation of the 1136 Park Avenue sale comparable for tax year 2012 under the County Assessor's income worksheet in evidence before the Commission in comparison to the Subject Property's income approach valuation relied upon by the County Board for the same tax year is substantially similar based on the following unit calculations: (1) $\$228,100/9,384 \text{ sq. ft.} = \$24.30 \text{ per sq. ft.}$ vs. $\$170,400/7,010 \text{ sq. ft.} = \$24.30 \text{ per sq. ft.}$; and (2) $\$228,100/8 \text{ units} = \$28,500 \text{ per apartment unit (rounded)}$ vs. $\$170,400/6 \text{ units} = \$28,400 \text{ per apartment unit}$.¹⁰⁴ The County Board, however, did not adopt the County Assessor's income valuation of this comparable and instead valued the parcel at \$154,000 for tax year 2012, which amounts to \$16.41 per sq. ft., or \$19,250 per unit ($\$154,000/9,384 \text{ sq. ft.} = \$16.41 \text{ per sq. ft.}$ and $\$154,000/8 \text{ units} = \$19,250 \text{ per unit}$ vs. $\$24.30 \text{ per sq. ft.}$ and $\$28,400 \text{ per unit}$ for the Subject Property). Significantly, I also note that the County's own sale comparable located at 1124 Park Avenue was assessed at \$19,380 per unit under the County Assessor's income approach for tax year 2012 ($\$193,800/10 \text{ units} = \$19,380 \text{ per unit}$).¹⁰⁵

Based on a review of all of the documents and statements presented at the hearing, I would find that the Subject Property is substantially similar in comparison to the County's own comparable sale property located at 1136 Park Avenue. Therefore, I would find that by failing to equalize the Subject Property with the 1136 Park Avenue comparable during the 2012 protest period, the County Board's determination for tax year 2012 is unreasonable or arbitrary because it treats similarly situated properties at materially different levels.¹⁰⁶

¹⁰² See, *The Appraisal of Real Estate*, Appraisal Institute, 13th Ed., 2008, 212 (“[r]educing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.”)

¹⁰³ The County's income worksheets for its own comparable located at 1136 Park Avenue and the Subject Property use the following identical income approach factors: (1) \$6 per sq. ft. rent rate; (2) 6% vacancy & collection loss rate; (3) 50 % expense ratio; and (4) 11.60% capitalization rate.

¹⁰⁴ See, E4:12 (County's comparable property chart), E4:26-32 (PRF for County comparable located at 1136 Park Avenue), and E4:31 (Income Approach Worksheet for County comparable located at 1136 Park Avenue).

¹⁰⁵ See, E4:12 (County's comparable property chart), E4:33 – 38 (PRF for County comparable located at 1124 Park Avenue), and E4:37 (Income Approach Worksheet for County comparable located at 1124 Park Avenue).

¹⁰⁶ See, *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 - 529 (2008) (“By adjudicating tax protests in greatly disparate amounts ... the Board failed to fulfill its ‘plain duty’ to equalize property valuations.”); *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

I note that the Nebraska Court of Appeals has indicated that “substantial similarity” for equalization purposes does not mean “identical.”¹⁰⁷ I also note that the Nebraska Court of Appeals stated as follows in *Zabawa v. Douglas County Bd. of Equalization*:

Even if the properties were not comparable, the Board could not value Zabawa's real property at its market value but value 676 Dillon Drive at 75.8 percent of its market value. In *Chief Indus. v. Hamilton Cty. Bd. of Equal.*, 228 Neb. 275, 422 N.W.2d 324 (1988), the taxpayer rebutted the presumption that the county board of equalization's decision was correct by showing that the assessor had undervalued other land in the county by 43 to 53 percent but had valued the taxpayer's dissimilar land at its full value. The court explained that “[t]he right of a taxpayer whose property alone is taxed at 100 percent of its true value is to have its assessment reduced to the percentage of that value at which others are taxed.” Id. at 286, 422 N.W.2d at 331. See, also, *Konicek v. Board of Equalization*, 212 Neb. 648, 324 N.W.2d 815 (1982).¹⁰⁸

Taxpayers are entitled to uniform and proportionate assessment of property, even though the result may be that it is assessed at less than actual value.¹⁰⁹ The Commission does not possess the authority to increase the value of a property not in dispute, and to do so without notice to the other owner would violate the principle of due process. The only available method to address the equalization problem stemming from the unequal treatment identified herein is to value the Subject Property and the comparable property assessed at \$154,000 in a similar manner.

In the case where it is determined that the decision of County Board is unreasonable or arbitrary from an equalization standpoint, the Commission must review the evidence and adopt the most reasonable equalization value.¹¹⁰ The calculations relating to this analysis are as follows: (1) \$115,000 - derived by multiplying the County Board’s \$170,400 determination based on the County Assessor’s income valuation by .675, which is the ratio of the County Board’s determination for the 1136 Park Avenue comparable for tax year 2012 in comparison to the County Assessor’s \$228,100 income valuation ($\$154,000/228,100 = .675$);¹¹¹ (2) \$115,000 -

¹⁰⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999) (Court of Appeals found “substantial similarity” of Subject Property in comparison to neighboring parcels even though Taxpayer’s appraiser testified that the Fairacres neighborhood at issue is an “assessor’s nightmare” because of the unique nature of parcels therein).

¹⁰⁸ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 227, 757 N.W.2d 522, 528 (2008)

¹⁰⁹ *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).

¹¹⁰ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999). See also, *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

¹¹¹ See, *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008) (“By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa's comparable

derived by multiplying the Subject Property's 7,010 sq. ft. area by the County Board's \$16.41 per sq. ft. determination for the 1136 Park Avenue comparable for tax year 2012 (\$154,000/9,384 sq. ft. = \$16.41; 7,010 x \$16.41 = \$115,000, rounded);¹¹² and (3) \$115,500 - derived by multiplying the Subject Property's six apartment units by the County Board's \$19,250 per unit determination for the 1136 Park Avenue comparable for tax year 2012 (\$154,000/8 units = \$19,250; 6 x \$19,250 = \$115,500. Based on a review of all of the documents and statements presented at the hearing, I would find that the best evidence of equalization value of the Subject Property for tax year 2012 is \$115,000.

V. CONCLUSION

I would find 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. I would also find that there is clear and convincing evidence that the County Board's decision for tax year 2012 is arbitrary or unreasonable, and that its determination should be vacated and reversed. I would further find that the assessed value of the Subject Property for tax year 2012 is:

Land	\$ 10,400
Improvements	\$104,600
Total	\$115,000

Thomas D. Freimuth, Commissioner

property at full market value—the Board failed to fulfill its 'plain duty' to equalize property valuations. Zabawa rebutted the presumption that the Board's decision was correct.”)

¹¹² See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).