

RECONVENE BOARD OF EQUALIZATION

(Klein)

2012 Cass County Board of Equalization

American Federal Bank

American Federal Bank is appealing the assessment on their property located at 215 5th St North, Fargo. For 2012, the assessment was raised from \$2,219,300 to \$2,712,000 or a 22% increase. The applicant presented written documentation (see Exhibit A) and an oral presentation stating that \$2.7 million is not an appropriate value for this building.

The Fargo Assessment Office has presented written documentation defending their assessment (Exhibit B).

I visited the property and met with bank officials, Dean McCleary and Steve Worwa. We discussed issues regarding the property and made a tour of the building. The appellant will not state what amount of relief that they are asking for. However, they have included in their presentation, an income capitalization analysis indicating a value of \$1,604,000. They indicate that the bank purchased the property in 1996 for \$1,000,000 through a written bid process.

It appears that there is a considerable difference of opinion of value regarding the property. The bank has indicated that they are willing to obtain an independent appraisal if the city and county would give value to the appraisal. Considering the circumstances, I believe that obtaining an appraisal for consideration is the best alternative. Before ordering the appraisal, the appellant should converse with the assessing officials regarding issues that the appraisal should address.

Suggested Motion: "I move to deny the American Federal appeal. If aggrieved, the applicant is advised to obtain an appraisal and file for abatement of taxes for 2012, if appropriate."

Memo to: Cass County Board of Equalization
RE: Notice of Increase in Real Estate Assessment
From: American Federal Bank, Dean McCleary and Steven Worwa

American Federal Bank received notice of increase in real estate assessment on property located at 215 5th St N, Fargo. Proposed change in value is \$492,700, which represents an increase of 22.2% to a proposed value of \$2,712,000, which we believe is excessive and overvalued. We have filed an appeal with the Assessment Department.

American Federal purchased the building at 215 5th St. N in 1996 at a price of \$1 million. The Assessment Department valued the building at \$1,883,000 in 1997 even though we had established the market value with the purchase. The higher assessment was based on an income cash flow method and used estimated rental revenues of \$12.66 SF along with estimated operating costs to justify this higher value. The rental rates used by the Assessment Department in this valuation were not realistic for 1996.

In our appeal, we used the same valuation method used by the Assessment Department initially (with **actual rents** and **actual operating costs**). The valuation is calculated to be \$1,603,786. The Assessment Department responded that this valuation method is no longer valid, values must now be based on recent sales of comparable properties. The \$2.7M valuation was based upon the sale of 9 commercial properties; however, we disagree that these building/sales fairly represent a comparable property for the following reasons:

1. **Not current valuations.** 8/9 sale dates were not recent sales, most were 5-9 years earlier. Federal guidelines require Banks to consider any appraisals over 12 months old to be invalid. Comparable sales must be current sales. The only current sale provided (317-323 5th St N) was at a value of \$30.20 SF, less than half the \$67.42 SF being proposed for American Federal.
2. **Not in same area.** 6/9 of the properties weren't located in downtown Fargo, but rather South Fargo and the buildings are 20-30 years newer. Federal appraisal guidelines require comparable sales to be from the same area and to be of similar age and construction.
3. **Not in the Renaissance Zone.** Of the 3 properties that were located in downtown Fargo, all are within the Renaissance Zone, while the American Federal property is not. This has an impact on the market value of our property and was not recognized in the assessment.
4. **Not comparable properties.** One of the downtown properties (15 Broadway N) is also a Bank building, so the Assessment Department referred to this sale frequently as being the most comparable. This property value was based upon a sale from 9 years ago. This building is located in the Renaissance Zone, and this property is a 100% brick structure, has a finished basement, an enclosed drive up facility, and on-site parking, none of these features are comparable to our facility.
5. **One current sale.** There was only one current sale (317-323 5 St N) that was sold in the past 12 months, and this property sold for \$30 SF, which is less than half of what is proposed for our facility.

The Assessment Department visited the AF property on April 27th. The property is conservatively decorated, and no upgrades have been made since the 1996 purchase. The 3-7 floors are open floors with no walls, so tenants must provide modular walls. Also much of the space is not rentable because of 3 stairwell systems and two elevators. The proposed valuation of \$2.7M represents a value that is 2.7 times higher than the purchase price. This equates to an average annual increase in value of 11.4% over the past 15 years. The \$2.7M is not an appropriate value for this building.

AMERICAN FEDERAL BANK HISTORICAL TAX ASSESSED VALUES



Income Capitalization Value

Gross revenue based on rents

First Fl	8,100	X	\$15.22	=	\$123,282.00
2nd Fl	1,298	X	\$11.19	=	\$14,524.62
2nd Fl	846	X	\$4.20	=	\$3,553.20
3rd Fl	3,649	X	\$13.22	=	\$48,239.78
4th Fl	3,649	X	\$13.22	=	\$48,239.78
5th Fl	3,649	X	\$13.22	=	\$48,239.78
6th Fl	3,649	X	\$13.22	=	\$48,239.78
7th Fl	3,649	X	\$13.22	=	\$48,239.78

Based on current rents from Sanford Health

Total Gross Revenues

\$382,558.72

Less Vacancy allowance

382,559 X 5%

-\$19,127.94

Less operating expenses

Utilities	90,000
Insurance	4,000
Mgmt fee @ 5%	19,128
Repairs/Maint	74,000
RE taxes	48,000

Actual operating expenses

Total Operating Expenses

-\$235,127.94

Net Operating Income

\$128,302.85

Capitalization rate (per our experience)

8.00%

Building Value

\$1,603,785.60



ASSESSMENT DEPARTMENT

AMERICAN FEDERAL BANK

215 5 ST N
FARGO

ND 58102

Date 03/20/2012 7:05

**NOTICE OF INCREASE IN REAL ESTATE ASSESSMENT
AND BOARD OF EQUALIZATION MEETINGS**

Parcel Number: 01-2160-00140-000 Property Location: 215 5 ST N

The Assessment Department has arrived at a new value on this property for the 2012 tax year. This change may have occurred because of new construction, improvements made to the property, a split from a larger tract, expiration of an exemption, a new appraisal, or an adjustment of the value due to changes in the market.

If you have any questions about your appraised value or this notice, please call our office between 7:45AM - 4:30PM, Monday thru Friday, at (701) 241-1340.

Real Estate Description:

LOT 1 BLOCK 8

N Dak Urban Renewal 1st

	** Full Value **	** Net After Exemptions and Credits **
Current Year	2,712,000	2,712,000
Last Year:	2,219,300	2,219,300
Change:	492,700	492,700

Hearing Schedule:

The City Board of Equalization will meet on April 10, 2012, in the City Commission Room at 200 3rd St. N. in Fargo at 7:30AM.

The County Board of Equalization will meet on June 4, 2012, in the Cass County Courthouse at 211 9th St. S. in Fargo at 3:30PM.

Mr. McCleary, requested information on why and how this property was re-appraised for 2012. This property was included in a re-assessment effort of all downtown properties for 2012 and was valued based on sales of similar properties. The full value increased from \$2,219,300 for 2011 to \$2,712,000 for 2012 as recapped in the table below:

Property Data Recap							
Parcel #	Property Type	Yr Blt	Site Area	Bldg Area	Site Value	Bldg Value	Total Value
01-2381-00180-000	59	1964	14,000	40,223			
2012 Assessment					\$ 112,000	\$ 2,600,000	\$ 2,712,000
Total Value / sf						\$ 67.42	
Building Value / sf						\$ 64.64	
2011 Assessment					\$ 112,000	\$ 2,107,300	\$ 2,219,300
Total Value / sf						\$ 55.17	
Building Value / sf						\$ 52.39	

ASSESSMENT DEPARTMENT RECOMMENDATION

Retain the current assessment "as is" based on the following sales.

The following table recaps recent **sales** of comparable properties in Fargo. As North Dakota is a non-disclosure state, certain identifying information is withheld for the confidential sales. Based on the age and condition of the subject property, the value indicated above is supported with most consideration given the "Building Sale Price per Square Foot" indication of value due to the subject's small site area and limited on-site parking.

Location	Address	Sale Date	Adj Sale \$	Property Type	Site Area	Yr Blt	Bldg sf	Total \$ / sf	Bldg \$ / sf	
Downtown	15 Broadway N	31-Mar-03	\$ 4,200,000	14	72,374	1926	49,460	\$ 84.92	\$ 67.85	26 yrs old
South	3137 32 Ave S	30-Sep-02	\$ 4,915,100	59	89,999	2000	27,965	\$ 175.76	\$ 159.67	12 yrs old
Downtown	502 1 Ave N	17-Aug-07	\$ 618,000	59	10,500	1902	13,296	\$ 46.48	\$ 38.58	110 yrs old
South	Conf South Fargo Sale							\$ 105.90	\$ 49.38	
South	1020 36 St S	9-Nov-01	\$ 1,300,400	59	50,591	1989	25,608	\$ 50.78	\$ 46.84	23 yrs old
South	4357 13 Ave S	14-Mar-03	\$ 1,210,800	59	30,260	1985	17,438	\$ 69.43	\$ 57.28	27 years old
Downtown	317-323 5 St N	1-Mar-12	\$ 755,100	59	21,070	1927	25,000	\$ 30.20	\$ 25.16	85 yrs old
South	3223 32 Ave S	31-Jan-03	\$ 5,227,100	59	91,191	1999	50,129	\$ 104.27	\$ 95.18	13 yrs old
South	1700 42 St S	31-Mar-03	\$ 1,500,000	59	60,583	1990	18,777	\$ 79.88	\$ 70.19	22 yrs old
South	Conf South Fargo Sale							\$ 74.37	\$ 68.99	
South	Conf South Fargo Sale							\$ 69.02	\$ 64.83	
South	1131 Westrac Dr S	30-May-08	\$ 1,300,000	59	33,172	1984	15,966	\$ 81.42	\$ 74.16	28 yrs old
	Minimum	9-Nov-01			10,500	1902	13,296	\$ 30.20	\$ 25.16	
	Maximum	1-Mar-12			511,830	2000	50,129	\$ 175.76	\$ 159.67	
	Mean				88,081		26,989	\$ 81.04	\$ 68.18	
	Median				50,591		21,995	\$ 77.13	\$ 66.34	

* In Renaissance zone, this is the only current sale, and it sold for \$30/sf.

* Big basement, generator, lots of land, parking lot

215 5 ST N

01-2160-00140-000

American Federal Bank

Dean McCleary

This property was included in a re-assessment effort of all downtown properties for 2012 and was valued based on the cost approach developed from sales within the DMU. The summary report of the cost calculation is reproduced on page 6.

The full value increased from \$2,219,300 for 2011 to \$2,712,000 for 2012.

Total Value per sf:	\$67.42
Building Value per sf:	\$64.64



The sales recapped below and are considered most comparable to the subject property and given the greatest weight when developing the opinion of value.

15 Broadway N, Fargo, ND

Sale Date:	03/31/03
Sale Price:	\$4,200,000
Total Sale Price per sf:	\$84.92
Building Sale Price per sf:	\$67.85

**51A & 51B Broadway N, Fargo, ND**

Sale Date:	05/31/11
Sale Price:	\$9,532,700
Total Sale Price per sf:	\$89.72
Building Sale Price per sf:	\$82.44

**322 Demers Ave, Grand Forks, ND**

Sale Date:	04/03/12
Sale Price:	\$3,125,000
Total Sale Price per sf:	\$61.59

* 21,000 square feet of unfinished area in building.

**ASSESSMENT DEPARTMENT RECOMMENDATION**

Retain the current assessment of \$2,712,000.

The following table recaps recent sales of comparable properties in Fargo. As North Dakota is a non-disclosure state, certain identifying information is withheld for the confidential sales. Based on the age and condition of the subject property, the value indicated above is supported with most consideration given the "Building Sale Price per Square Foot" indication of value due to the subject's small site area and limited on-site parking.

Address	Sale Date	Adj Sale \$	Property Type	Site Area	Yr Blt	Bldg sf	Total \$ / sf	Bldg \$ / sf
15 Broadway N	31-Mar-03	\$ 4,200,000	14	72,374	1926	49,460	\$ 84.92	\$ 67.85
51A & 51B Broadway N	31-May-11	\$ 9,532,700	14 & 59	69,000	1981	106,250	\$ 89.72	\$ 82.44
3137 32 Ave S	30-Sep-02	\$ 4,915,100	59	89,999	2000	27,965	\$ 175.76	\$ 159.67
502 1 Ave N	17-Aug-07	\$ 618,000	59	10,500	1902	13,296	\$ 46.48	\$ 38.58
Conf South Fargo Sale							\$ 105.90	\$ 49.38
1020 36 St S	9-Nov-01	\$ 1,300,400	59	50,591	1989	25,608	\$ 50.78	\$ 46.84
4357 13 Ave S	14-Mar-03	\$ 1,210,800	59	30,260	1985	17,438	\$ 69.43	\$ 57.28
3223 32 Ave S	31-Jan-03	\$ 5,227,100	59	91,191	1999	50,129	\$ 104.27	\$ 95.18
1700 42 St S	31-Mar-03	\$ 1,500,000	59	60,583	1990	18,777	\$ 79.88	\$ 70.19
Conf South Fargo Sale							\$ 74.37	\$ 68.99
Conf South Fargo Sale							\$ 69.02	\$ 64.83
1131 Westrac Dr S	30-May-08	\$ 1,300,000	59	33,172	1984	15,966	\$ 81.42	\$ 74.16
Minimum	9-Nov-01			10,500	1902	13,296	\$ 46.48	\$ 38.58
Maximum	31-May-11			511,830	2000	106,250	\$ 175.76	\$ 159.67
Mean				92,075		33,760	\$ 86.00	\$ 72.95
Median				60,583		22,299	\$ 80.65	\$ 68.42
Total Value							Total Value / sf	Bldg Value / sf
215 5 St N		\$ 2,712,000	59	14,000	1964	40,223	\$ 67.42	\$ 64.64

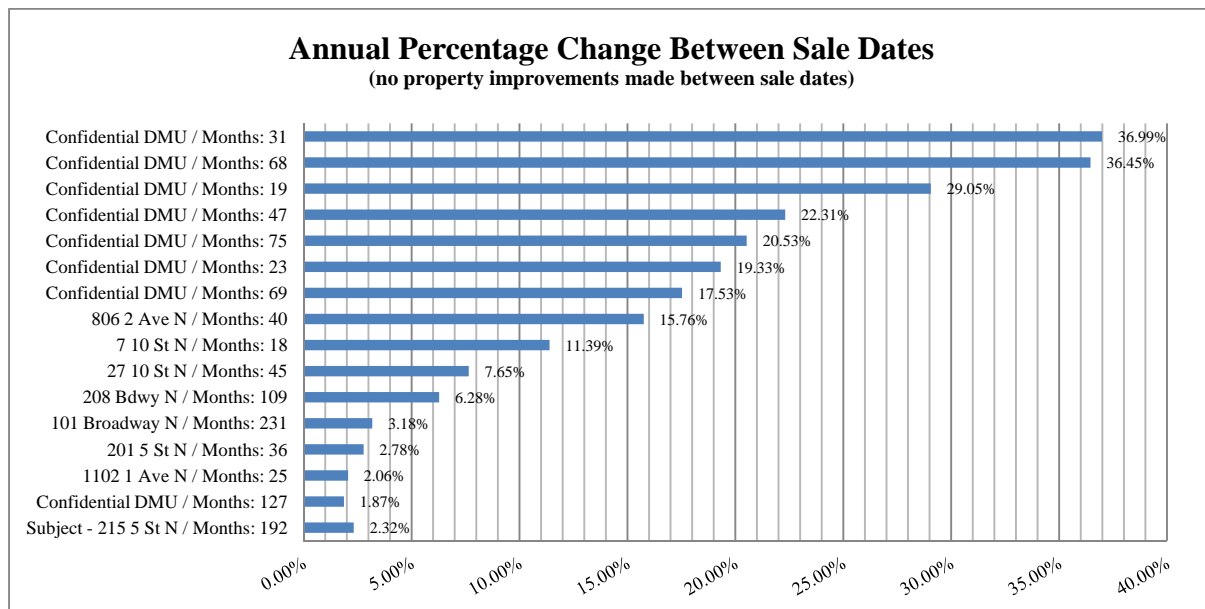
Additionally, a search for comparable properties in an expanded geographic area was also made due to very limited sales and/or listings of multi-story office properties in the Fargo market. This resulted in one sale (located in Grand Forks), an actively marketed property in Minot, two actively marketed properties in Fargo, and two actively marketed properties in Sioux Falls, South Dakota. These properties are recapped in the following table with photos on a following page.


Property Location	Status	Sale Date	Sale Price / Asking Price	Stories	Building Area	Land Area	Building to Land Ratio	Price / sf
322 Demers Ave, Grand Forks, ND	Sold	4/3/2012	\$ 3,125,000	5	50,735	27,878	1.82	\$ 61.59
123 1 St SW, Minot, ND	Active	NA	\$ 5,300,000	8	77,000	10,948	7.03	\$ 68.83
101 N Phillips Ave, Sioux Falls, SD	Active	NA	\$ 6,900,000	6	102,422	55,757	1.84	\$ 67.37
325 1 Ave S Sioux Falls, SD	Active	NA	\$ 17,000,000	5	65,129	42,689	1.53	\$ 261.02
222 Broadway N, Fargo, ND	Active	NA	\$ 1,200,000	2	13,860	6,930	2.00	\$ 86.58
720 Main Ave, Fargo, ND	Active	NA	\$ 895,000	2	11,841	10,500	1.13	\$ 75.58
Mean				5	53,498	25,784	2.56	\$ 103.50
Median				5	57,932	19,413	1.83	\$ 72.21
Total Value								
215 5 St S			\$ 2,712,000	8	40,223	14,000	2.87	\$ 67.42


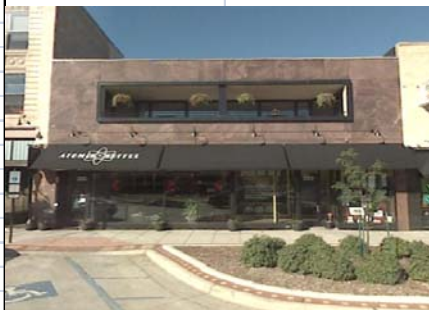
Furthermore, a comparison of this property to other similar use properties within the DMU was made for equity purposes. The table below recaps the value of these properties on a per square foot basis with the American Federal Bank reflecting a value below that of competing buildings on both a total value per square foot and building value per square foot.



Property	Address	Bldg Value	Land Value	Total Value	Bldg Area	Total Value / sf	Bldg Value / sf
US Bank	505 2 Ave N	\$ 2,702,100	\$ 175,000	\$ 2,877,100	26,774	\$ 107.46	\$ 100.92
Gate City Bank	500 2 Ave N	\$ 6,877,900	\$ 420,000	\$ 7,297,900	61,159	\$ 119.33	\$ 112.46
State Bank	51A Bdwy N	\$ 2,595,900	\$ 216,000	\$ 2,811,900	27,970	\$ 100.53	\$ 92.81
	51B Bdwy N	\$ 6,737,400	\$ 223,000	\$ 6,960,400	78,280	\$ 88.92	\$ 86.07
Alerus	15 Bdwy N	\$ 3,729,600	\$ 202,000	\$ 3,931,600	49,460	\$ 79.49	\$ 75.41
Wells Fargo Bank (Bank Only)	406 Main Ave	\$ 8,040,800	\$ 840,000	\$ 8,880,800	84,776	\$ 104.76	\$ 94.85
Bank of the West (Bank & Office Tower)	520 Main Ave	\$ 7,621,000	\$ 422,800	\$ 8,043,800	101,601	\$ 79.17	\$ 75.01
American Federal Bank	215 5 St N	\$ 2,600,000	\$ 112,000	\$ 2,712,000	40,223	\$ 67.42	\$ 64.64

The graphic below depicts the sale and re-sale of 15 properties located within the DMU and the corresponding annual percentage change in sale price between the two sale dates. The original sale dates occurred from between July of 1981 and January of 2007 with the re-sales occurring between September 2000 and January 2012 with the graphic indicating the number of months between sale dates. The mean annual percentage change is 15.54 percent while the median annual percentage change is 15.76 percent. The annual percentage change in value of the subject property is also reflected from February 1996 (after a reduction in value resulting from a recheck) to the current assessment date with an indicated annual percentage change of 2.32 percent for the 16 year period.



		Property Location	123 1 St SW, Minot, ND	
<div>Properties Currently Listed For Sale</div>				
		Status	Active	Former S&L
		Sale Date	NA	
		Asking Price	\$ 5,300,000	
		Building Area	77,000	
		Land Area	10,948	
		List \$ / sf	\$ 68.83	

Property Location	325 1 Ave S Sioux Falls, SD	222 Broadway N, Fargo, ND
 		
Status	Active	Active
Sale Date	NA	NA
Asking Price	\$ 17,000,000	\$ 1,200,000
Building Area	65,129	13,860
Land Area	42,689	6,930
List \$ / sf	\$ 261.02	\$ 86.58

Property Location	101 N Phillips Ave, Sioux Falls, SD	720 Main Ave, Fargo, ND
 		
Status	Active	Active
Sale Date	NA	NA
Asking Price	\$ 6,900,000	\$ 895,000
Building Area	102,422	11,841
Land Area	55,757	10,500
List \$ / sf	\$ 67.37	\$ 75.58

Income Approach Consideration

The income approach to value consists of an appraisal analysis procedure in which anticipated future benefits to be derived from the ownership of property are converted into a value estimate. Anticipated future income and/or reversions are discounted to a present worth figure through the capitalization process.

The approach recognizes that potential buyers anticipate a future income stream. Investors are interested in the size, certainty, and timing of the income flow. Real estate investment can readily be substituted for other kinds of investments, and the demand for income producing real property is strongly influenced by the return on alternate investments.

Reliance on the income approach in assessment appraisal requires income and expense data on multiple competing properties as well as analysis of market conditions and expectations. Generally, assessors do not receive a large amount of income and expense information and must rely on published data and trends along with the information they are able to collect.

In considering the income approach for the subject property, a combination of local and national information was analyzed. Considering the fact that office capitalization rates are influenced by interest rates, in particular as interest rates and mortgage rates decline, office cap rates tend to also decline.

Our analysis found a range of published capitalization rates that would apply to investments similar to the subject property from 6.75% to 8.1%. We also found a range of likely market rents applicable to the subject from \$13 to \$15 per square foot of leasable area per year and typical expense ratios of roughly 55% of gross income.

Based on those ranges of income, expense and market information, a range of value for the subject property by the income approach was considered at this time to be from \$2,100,000 to \$2,900,000.

The most weight was given to the market (sale) derived cost approach model due to a general lack of income and expense information. The summary report from the cost approach is on the following page.

Estimate Number : 1896
 Parcel Number : 01-2160-00140-000
 Property Owner : American Federal Bank
 Property Address : 215 5 ST N
 Property City : Fargo
 State/Province : ND
 ZIP/Postal Code : 58102

Section 1**Occupancy**

	<u>Class</u>	<u>Height</u>	<u>Rank</u>
20% Bank	Fireproof structural steel frame	17.00	2.0
69% Office Building	Fireproof structural steel frame	11.00	2.0
11% Mechanical Penthouse	Fireproof structural steel frame	15.00	2.0
Total Area :	40,223		
Number of Stories (Section) :	8.00		
Shape :	2.00		
Effective Age (years) :	30.00		

Components

	<u>Units/%</u>	<u>Other</u>
Elevators:		
Passenger #	2	Stops: 7
Mezzanines:		
Mezzanines-Storage	1,496	
Mezzanines-Office	1,496	
HVAC (Heating):		
Hot and Chilled Water	37,130	

Basement

	<u>Type</u>	<u>Area</u>	<u>Depth</u>	<u>Rank</u>
Bank	Unfinished	752	9.00	1.0
Number of Levels :	1.00			
Shape :	1.00			

Basement Components

	<u>Units/%</u>	<u>Other</u>
HVAC (Heating):		
Hot Water	752	

	<u>Units/%</u>	<u>Cost</u>	<u>Total</u>
Basic Structure			
Base Cost	40,223	52.64	2,117,339
Exterior Walls	35,799	11.08	396,653
Heating & Cooling	37,130	19.70	731,461
Elevators	2	91,245.50	182,491
Mezzanine	2,992	24.22	<u>72,481</u>
Basic Structure Cost	40,223	87.03	3,500,425
Basement			
Unfinished Basement	752	27.77	<u>20,883</u>
Building Cost New	40,223	87.54	3,521,308
Extras			
Bank Equipment			55,000
Concrete Paving	2,100	2.00	<u>4,200</u>
Replacement Cost New	40,223	89.02	3,580,508
Less Depreciation			
Physical & Functional	26.0%		<u>930,933</u>
Depreciated Cost of Improvements (Rounded)			\$2,600,000
Land Value			<u>112,000</u>

Total Value By Cost Approach as of 5/15/2012**\$2,712,000**

Remarks for Section 1:

Year Built: 1964 and 1993. The building was completely gutted for asbestos abatement. All new duct work, electrical fixtures, partitions, ceilings and floor cover were replaced. Construction of new stairway from Penthouse to the ground was done on Southside of structure. Bldg was vacated in 1995 when 1st Bank purchased Metropolitan Federal Bank. Property sold 1996 to American Federal \$1,200,000 per purchase agreement. Lot size: 14,000 sq. ft. Square footage includes mezzanine and penthouse floors. SF includes south stairs.

Cost Data by Marshall & Swift

2012 Cass County Board of Equalization

Gill's Investments, LLC

Mr. Gill is appealing the assessment on his commercial property located at 66 Broadway, Fargo. For 2012, the assessment was increased from \$1,086,700 to \$1,361,000 (25.2% increase). Previously, the property was granted a remodeling exemption. For 2011, the net value after exemption was \$861,500.

Mr. Gill has submitted a purchase agreement dated April 24, 2012 for \$700,000 (Exhibit C). The agreement is signed by the prospective buyer, but not by the seller. Mr. Gill indicates that he would be satisfied with an \$800,000 assessment.

The City of Fargo report is attached (Exhibit D).

I toured the property and visited with Mr. Gill. Mr. Gill was apprehensive in answering questions regarding marketing of the property. He refused to answer questions regarding the purchase agreement, whether the property was currently for sale, asking price for the property etc.

Earlier, there was discussion that the prospective purchasers may have an appraisal and asbestos report. Mr. Gill's attorney, Craig Johnson, indicates that the prospective purchaser does not have any reports. Mr. Johnson has not been able to address my concerns regarding whether the property is currently listed for sale, the asking price, etc.

In reviewing the appeal, I have some concerns about the circumstances surrounding the unsigned purchase agreement. It's my understanding that Mr. Gill was asking excessively more than the proposed 2012 assessment.

The property has experienced a vacancy problem for the past few years. It would appear that there are marketing and financial issues that need to be resolved.

Mr. Gill has not shown that the proposed valuation is excessive.

Suggested Motion: "I move to deny the Gill's Investment appeal. If aggrieved, the applicant is advised to obtain an appraisal and file for abatement of taxes for 2012, if appropriate."

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT, entered into as of 24 day of APRIL, 2012 (the "Effective Date"), by and among Kilbourne Group, LLC, a North Dakota limited liability company ("Buyer"), and Gill's Investment, LLP a/k/a Gill's Investment LLC ("Seller").

In consideration of the mutual terms, covenants, conditions and agreements herein contained, it is hereby agreed by and between the parties as follows:

1. **Sale of Property.** Seller agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and take from Seller, certain real property located in the County of Cass and State of North Dakota, commonly known as 66 and 68 Broadway Street North, Fargo, North Dakota, and described as the North 4 and 2/3 feet of Lot 22, and all of Lots 23-26, Block 1, Roberts Addition to the City of Fargo, together with all buildings, improvements and fixtures situated thereon or affixed thereto, and together also with all hereditaments and appurtenances belonging or in any way connected thereto (the "Property").

2. **Purchase Price and Payment.** The purchase price to be paid by Buyer to Seller for the Property shall, subject to adjustments set forth in Section 6 below, be the sum of US\$700,000.00, payable as follows: (a) US\$20,000.00 earnest money paid to the Closing Agent within 2 business days following the last party to sign this Agreement, to be held, administered and distributed pursuant to this Agreement; and (b) the balance in cash or immediately collectable funds on the date of closing.

3. **Contingencies.** Buyer's obligation to consummate the transaction contemplated by this Agreement is contingent upon the following:

- (a) Seller's ability to convey marketable title to the Property on the Date of Closing, free and clear of any and all liens or encumbrances whatsoever except Permitted Encumbrances.
- (b) Buyer, within 21 days following the Effective Date, conducting a feasibility review (the "Feasibility Review") of the Property, satisfying Buyer, in its sole discretion, that the Property is suitable and feasible for its intended use and redevelopment. Such Feasibility Review may include, but shall not be limited to, review and approval of operating costs and projected rents; the Existing Leases (defined below); physical, structural and environmental condition testing, studies, and reviews; insurance requirements and costs; electrical and mechanical systems and utility services testing, studies and reviews; an ALTA survey of the Property (the "Survey"); a determination of the ability to acquire light and air easements from one or more adjoining landowners; and a review of City of Fargo codes, ordinances and programs.

In order to assist Buyer in evaluating its contingencies above, Seller shall allow Buyer access to all portions of the Property as and when requested by Buyer (upon reasonable notice), and Seller shall,

on or before 5 days following the Effective Date, provide to Buyer copies of any and all of the following within the possession or control of Seller and affecting the Property: all written leases and written summaries of all verbal leases (the "Existing Leases"); service contracts; appraisals; surveys; any other reports, studies and the like. Upon the failure of any of the foregoing contingencies, at the option of Buyer exercised by written notice to Seller given not later than the applicable time period provided for such contingency, this Agreement shall terminate and be of no further force or effect, in which case any earnest money shall be immediately returned to Buyer.

4. **Title Examination.** Seller shall, at its expense, within 10 days after the Effective Date, provide Buyer an updated Abstract or Abstracts of Title covering the Property (which shall include all appropriate searches). Buyer shall, not later than 14 days following receipt of such abstract and the Survey, examine title and object to matters disclosed thereby, such objections to be made in writing or deemed to be waived. Seller shall, at its expense, diligently undertake to resolve all matters objected to, and if necessary, the Date of Closing shall be extended to allow Seller to do so (provided, however, the Date of Closing shall not be extended more than 180 days from the date of Buyer's written objections). If all objected to matters are not corrected within 180 days from the date of written objection, this Purchase Agreement may be terminated at the written option of Buyer, and upon such termination, any earnest money shall be immediately returned to Buyer. After such return, neither Seller nor Buyer shall have any further obligation with respect to this Agreement. If all objected to matters are corrected within said time or Buyer elects to close notwithstanding any uncorrected matters, the parties shall promptly close this transaction.

5. **Closing.** This transaction shall close on or before the 30th day following the Effective Date, or the next business day thereafter if such 30th day is not a business day (the "Date of Closing").

- (a) On the Date of Closing, Seller shall execute and deliver to Buyer the following:
 - (i) A Warranty Deed from Seller to Buyer conveying the Property to Buyer, free and clear of all liens, charges and encumbrances, except the following (collectively, the "Permitted Encumbrances"):
 - [a] real estate taxes and installments of special assessments not yet due and payable;
 - [b] the reservation of mineral rights by the State of North Dakota;
 - [c] recorded utility and other easements that do not interfere with present or proposed use of or improvements to the Property;
 - [d] the rights of tenants under the Existing Leases and the BCS Lease, copies or summaries of which (as the case may be), have been provided to Buyer pursuant to Section 3 above; and
 - [e] any others not objected to by Buyer pursuant to Section 4 hereof.
 - (ii) A lease between Buyer and Seller for the space currently occupied by Broadway Classic Subs (the "BCS Premises") for the continued operation of the Broadway Classic Subs business (the "Business") and providing for the following terms and conditions and otherwise on terms and conditions reasonably acceptable to the parties (the "BCS Lease"):

- [a] Seller to be responsible for: electricity, heating, air conditioning, gas, water, sewer, telecommunications and any other utilities supplied to or consumed within the BCS Premises; janitorial and pest control within the BCS Premises; its pro-rata share of real estate taxes and installments of special assessments for the Property; and all repairs and maintenance within the BCS Premises.
 - [b] A term of 5 years from the Date of Closing, with one five-year extension option in favor of Seller, which shall be exercised, if at all, 180 days prior to expiration of the original term.
 - [c] Base Rent of \$12 per square foot of space of the BCS Premises per annum, payable in equal monthly installments in advance on the first day of the month, with a 3% annual increase from and after the first anniversary of the Date of Closing and on each anniversary thereafter.
 - [d] Seller shall provide one month's security deposit, and Nachhatter Sing Gill shall personally guarantee the BCS Lease.
 - [e] If and when Buyer redevelops the Property, it shall do so in a manner that materially affects the Business for a period not to exceed four months. During such four-month period, Buyer may elect to close the Business, in which case Buyer shall not be obligated to pay Base Rent for any portion of such four-month period during which the Business does not operate (normal holiday or other days the Business is closed, excluded).
- (iii) A FIRPTA Certificate and 1099-S.
 - (iv) A customary Seller's Affidavit completed in a manner allowing the title company to remove the standard title policy exceptions covered thereby.
 - (v) All other documents affecting title to and possession of the Property and reasonable necessary to transfer or assign the same to Buyer, free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.
- (b) On the Date of Closing, The Closing Agent shall deliver the earnest money into closing and Buyer shall deliver the balance of the purchase price as set forth in Section 2.
 - (c) The closing and delivery of all such documents shall take place at the offices of The Title Company, 35 4th Street North, Suite 102, Fargo, North Dakota 58102, or with such other closing agent as may be agreed upon by Buyer and Seller (the "Closing Agent"). Seller will deliver possession and the Property to Buyer on the Date of

Closing, subject only to the BCS Lease and tenants under leases, copies or summaries of which (as the case may be), have been provided to Buyer pursuant to Section 3 above. Seller shall also deliver to Buyer on the Date of Closing possession and ownership of the Abstract(s) of Title for the Property.

6. **Adjustments.** Seller shall pay, on or before the Date of Closing, all real estate taxes and installments of special assessments for 2011 (payable 2012) and prior years. The parties shall prorate, to the Date of Closing, all real estate taxes and installments for special assessments for 2012 (payable 2013) based on prior year's numbers as supplemented by any additional information available as of the Date of Closing. Buyer shall assume and be responsible for the payment of all real estate taxes and installments for special assessments for the year 2013 (payable 2014) and subsequent years. Buyer shall pay for the preparation of the BCS Lease. Buyer shall pay for all aspects of its Feasibility Review, title examinations and any title insurance required by Buyer or its lender and any inspections performed by Buyer. Seller shall pay for provision of the Abstract(s), preparation of the Warranty Deed and any actions necessary to correct title objections. The parties shall share equally any closing fee charged by the Closing Agent. All other items shall be paid for by the party ordering the same.

7. **Representations and Warranties by Seller/Indemnification.** Seller represents and warrants to Buyer that:

- (a) On the Date of Closing, each Seller will own the Property, free and clear of all liens, charges and encumbrances, except the Permitted Encumbrances.
- (b) Except for the Existing Leases and the BCS Lease, Seller is not a party to a lease or other agreement with any other party that would allow such party to possess any portion of the Property beyond the Date of Closing.
- (c) Except for the Existing Leases and the BCS Lease, there will be no liabilities which encumber the Property and no obligations, direct or contingent, and no contracts or commitments relating to the Property.
- (d) For all periods prior to closing, Seller shall continue to operate the Property in a sound and commercially reasonable manner, undertaking such actions and repairs as are necessary to preserve the quality and value thereof.
- (e) To the best of Seller's knowledge, there is no action, litigation, investigation, condemnation or proceeding of any kind pending against the Seller or the Property.
- (f) To the best of Seller's knowledge, the conveyance of the Property will not violate any applicable statute, ordinance, governmental restriction or regulation, or any private restriction or agreement.
- (g) To the best of Seller's knowledge, all buildings and improvements within the Property are located entirely within the boundary lines of the Property.

- (h) To the best of Seller's knowledge, there are no deferred special assessments pertaining to the Property or planned or commenced improvements which would result in assessments being levied against the Property.
- (i) To the best of Seller's knowledge, with the exception of asbestos-containing materials located throughout the Property, there have been no hazardous materials released or removed from, or placed, held, located or disposed on, under or at the Property or any part thereof, and no part of the Property has ever been used as a treatment, storage or disposal site for any hazardous material. For the purposes of this Agreement, "hazardous material" means and includes any toxic or hazardous substance, pollutant, or contaminant or substance defined in or regulated by the Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act, any applicable so-called "super fund" or "super lien" law, the Toxic Substances Control Act, the Solid Waste Disposal Act, or any other applicable federal, state or local statutes, ordinances, orders or regulations, as now in effect, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials, and any other hazardous, toxic or dangerous waste, substance or material. There may be asbestos in the building. Buyer has been made aware of this and is conducting its own investigation with respect to the presence of asbestos.
- (j) To the best of Seller's knowledge, there are no underground wells, above or below ground fuel or other storage tanks or private septic systems on, under or upon the Property.
- (k) To the best of Seller's knowledge, there are no unpaid amounts for labor or materials provided to the Property.
- (l) Seller has not retained any real estate brokers or real estate agents whereby Seller would be obligated to pay a fee or commission as a result of the sale of the Property or any part thereof.
- (m) Seller, on the Date of Closing, will have used its best efforts to comply with all of its obligations hereunder, unless such compliance has been waived in writing by Buyer, and all representations and warranties made hereunder shall be true and correct on said date; provided, however the failure of Seller to fully comply with all of its obligations under this Agreement shall entitle Buyer to declare this Agreement null and void as provided below.

Seller hereby agrees that the truthfulness of each of said representations and warranties and all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder. Upon the breach of any representation or warranty hereof, Buyer may, prior to the Date of Closing, declare this Purchase Agreement to be null and void, or Buyer may elect to close this sale. If Buyer elects to declare this Agreement null and void in writing (citing the express breach by Seller), all earnest money shall be immediately refunded to Buyer and upon such refund, neither party shall have any further rights or obligations hereunder. All representations,

warranties and covenants of Seller in this Section 7 shall survive the Date of Closing, and Seller shall indemnify, defend and hold Buyer, its successors and assigns, harmless with respect to any loss, cost, expense, damage or liability (including reasonable attorneys' fees) arising out of or relating to said representation or warranty being untrue.

8. **Notices.** Any notice or election required or permitted to be given or served by any party hereto upon any other shall be deemed given or served in accordance with the provisions of this Purchase Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Seller: Gill's Investment, LLP
Attn: Nachhattar Singh Gill, Partner
68 Broadway St
Fargo, ND 58102

If to Buyer: Kilbourne Group, LLC
Attn: Mike Allmendinger
102 Broadway, Suite 202
PO Box 9561
Fargo, ND 58106-9561

Each such mailed notice or communication shall be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication shall be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner above specified.

9. **Captions.** The paragraph headings or captions appearing in this Purchase Agreement are for convenience only, are not a part of this Purchase Agreement and are not to be considered in interpreting this Purchase Agreement.

10. **Effective Purchase Agreement.** This Purchase Agreement shall become effective and shall be binding upon the parties only after it has been executed by all of the parties.

11. **Entire Agreement/ Modification.** This Purchase Agreement constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Purchase Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties.

12. **Binding Effect/Context.** All covenants, agreements, warranties and provisions of this Purchase Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns, and shall continue in force and effect and be binding after the Date of Closing and delivery of the closing documents. When used herein, the

singular shall include the plural, the plural shall include the singular, and the use of one gender shall include all other genders, as and when the context so requires.

13. **Controlling Law.** This Purchase Agreement has been made and entered into under the laws of the State of North Dakota, and said laws shall control its interpretation.

14. **Rules of Construction.** The parties acknowledge that they have both had the opportunity to have this Agreement reviewed by their respective attorneys, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document shall be operative against either Buyer or Seller.

15. **Time of Essence.** Time is of the essence as to all dates and time periods set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement to be executed as of the day and year first written above.

SELLER:

BUYER:

GILL'S INVESTMENT LLP

KILBOURNE GROUP, LLC

By: _____

By: Michael Aubrey

Its: _____

Its: VICE president

1381625.2

66 Broadway N**Gill's Investments, LLC**

01-2381-00180-000

This property was included in a re-assessment effort of all downtown properties for 2012. The reappraisal effort included a review of 377 properties within the downtown area with Downtown Mixed Use (DMU) zoning. Properties with limited data were re-inspected. As a result of the review, 129 of the 377 properties were reappraised based on sales of similar properties. This property was included in those where the previous value indicated a need for reappraisal.

The full value increased from \$1,086,700 for 2011 to \$1,361,000 for 2012 as recapped in the table below:

Property Data Recap							
Parcel #	Property Type	Yr Blt	Site Area	Bldg Area	Site Value	Bldg Value	Total Value
01-2381-00180-000		75	1893	16,334	34,618		
2012 Assessment					\$ 196,000	\$ 1,165,000	\$ 1,361,000
Total Value / sf						\$ 39.31	
Building Value / sf						\$ 33.65	
2011 Assessment					\$ 196,000	\$ 890,700	\$ 1,086,700
Total Value / sf						\$ 31.39	
Building Value / sf						\$ 25.73	

This property also received the benefit of a remodeling exemption for the years 2007-2011. For the 2012 tax year, in addition to the increase in value due to the reappraisal, the exemption representing about 20% of the total property value expired.

A breakdown summary of the effect of the property tax exemption is illustrated in the table below:

Remodeling Exemption Summary			
Assessment Year	Full Appraised Value	Value Exempted	Net Taxable Appraised Value
2007	\$1,044,500	\$214,500	\$830,000
2008	\$1,065,400	\$219,800	\$845,600
2009	\$1,065,400	\$219,800	\$845,600
2010	\$1,065,400	\$219,800	\$845,600
2011	\$1,086,700	\$225,200	\$861,500
2012	\$1,361,000	\$0	\$1,361,000

ASSESSMENT DEPARTMENT RECOMMENDATION

Retain the current assessment “as is” based on the following sales.

The following table recaps recent **sales** of comparable properties in Fargo. As North Dakota is a non-disclosure state, certain identifying information is withheld for the confidential sales. Based on the age and condition of the subject property, the value indicated above is supported.

Address	Sale Date	Adj Sale \$	Property			Bldg sf	Total \$ / sf	Bldg \$ / sf
			Type	Site Area	Yr Blt			
214 Broadway N	26-Sep-07	\$ 275,400	60	3,500	1898	5,200	\$ 52.96	\$ 46.23
208 Broadway N	8-Jul-10	\$ 632,600	72	7,000	1909	18,000	\$ 35.14	\$ 31.26
107 Robert St N	16-Jul-07	\$ 390,300	60	3,163	1915	4,920	\$ 79.33	\$ 74.25
107 Broadway N	30-Nov-07	\$ 292,500	74	3,500	1902	5,000	\$ 58.50	\$ 50.10
Conf DMU Sale							\$ 109.98	\$ 103.00
Conf DMU Sale							\$ 87.27	\$ 71.93
Conf DMU Sale							\$ 38.77	\$ 35.76
Conf DMU Sale							\$ 28.04	\$ 26.04
Conf DMU Sale							\$ 33.85	\$ 29.96
317-323 5 St N	1-Mar-12	\$ 755,100	59	21,070	1927	25,000	\$ 30.20	\$ 25.16
502 1 Ave N	17-Aug-07	\$ 618,000	59	10,500	1902	13,296	\$ 46.48	\$ 38.58
Minimum	1-Sep-05			3,163	1893	3,005	\$ 28.04	\$ 25.16
Maximum	1-Mar-12			38,282	1927	31,500	\$ 109.98	\$ 103.00
Mean				10,663		15,640	\$ 54.59	\$ 48.39
Median				7,000		15,000	\$ 46.48	\$ 38.58

Cost Approach Summary Report

Estimate Number: 1138

Parcel Number: 01-2381-01800-000

Section 1**Occupancy**

	Class	Height	Rank
40% Office Building	Masonry bearing walls	12.00	2.0
19% Multiple Res (Low Rise)	Masonry bearing walls	12.00	2.0
41% Retail Store	Masonry bearing walls	12.00	2.0
Total Area	: 34,618		
Number of Stories (Section)	: 2.00		
Shape	: 1.0		
Effective Age (years)	: 40.0		

Components

	Units/%	Other
Elevators:		
Passenger #	1	Stops : 4
HVAC (Heating):		
Package Unit	81%	
Electric	19%	

Basement

	Type	Area	Depth	Rank
Office Building	Unfinished	16,239	9.00	
Number of Levels	: 1.0			
Shape	: 2.0			

Cost as of 07/2011

	Units	Unit Cost	Total Cost New	Less Depreciation	Total Cost Depreciated
Basic Structure					
Base Cost	34,618	48.56	1,681,050	1,039,898	641,152
Exterior Walls	34,617	15.96	552,487	341,768	210,719
Heating & Cooling					
Package Unit	28,041	11.29	316,583	195,838	120,745
Electric	6,577	6.17	40,580	25,103	15,477
Elevators					
Passenger #	1	68,033.00	68,033	42,085	25,948
Basic Structure Cost	34,618	76.80	2,658,733	1,644,692	1,014,041
Basement					
Unfinished Basement	16,239	24.46	397,206	245,712	151,494
Building Cost New	34,618	88.28	3,055,939	1,890,404	1,165,535
Less Depreciation					
Physical & Functional	61.9%			1,890,404	1,165,535
Depreciated Cost	34,618	33.67			1,165,535

Remarks

Cost Data by Marshall & Swift

2012 Cass County Board of Equalization

Lenora Dittmer

Lenora Dittmer had questions regarding land that she owns in Durbin Township. She indicates that the land is valued higher in Durbin than land owned in other townships, even though she feels that the productivity is lower.

I did visit with Ms. Dittmer regarding her valuation. For 2012, all agricultural land was valued using detailed soil survey data. Soils were rated using the productivity indexes that were assigned by the USDA soil survey scientists. These soil ratings were applied across township lines.

The Durbin Twp assessor and I visited in regards to her concerns. We also viewed the property.

Soils within a specific mapping unit can vary somewhat. There also is a certain amount of subjectivity when assigning the soil productivity indexes. Weather can also affect production. However, this is the best available information available to assessment officials. The state legislature requires assessors us to use detailed soils information. It appears that the land is equitably assessed based on the soil ratings that were assigned.

However, there may be drainage issues that need to be reviewed. Due to time constraints, the assessor has agreed to further review the assessment this fall.

Suggested Motion: “I move to uphold the Lenora Dittmer assessments, as equalized by Durbin Twp and as recommended by the Director of Equalization. However, the Director of Equalization will fully review Ms. Dittmer’s concerns with the local assessor and local board.”

2012 Cass County Board of Equalization

Monte Baumgarten

Monte Baumgarten is appealing the assessments on two tracts of land located in Sections 29 and 33 of Durbin Twp. For 2012, the assessment in section 29 increased 46% from \$68,400 to \$99,700. The assessment in section 33 increased 31% from \$109,900 to \$144,300. Mr. Baumgarten indicates that both tracts have flooding issues, either from the Buffalo Creek or the Maple River.

Mr. Baumgarten is asking that the increase on both tracts be reduced to the average increase for Cass County, or a 19% increase.

In 2012, Cass County implemented the detailed soils survey method of assessing farmland as required by statute. Soils were rated using the productivity indexes assigned by the USDA soil survey scientists. For 2012, agland assessments in Cass County increased 19%, with agland in Durbin Twp increasing 22%. There was a shifting of values in Durbin Twp. The north half of the township (sec 1-18) increased an average of 12% and the south half (sec 19-36) increased an average of 32%. The predominant soil throughout Durbin Twp is Fargo Silty Clay.

Mr. Baumgarten attended the township board of equalization. There appeared to be some confusion regarding procedures to address adjustments to the soil assessment computation. For 2012, neither the assessor nor the board made any adjustments to the soil survey computation for Durbin Twp.

The local assessor and I did drive by the parcels in question and discussed the appeal. His appeal may have merit and may be entitled to some type of reduction. However, we both feel that the issue should be discussed fully with the local board, as they are most knowledgeable about drainage.

There may be other tracts that should also be reviewed. Due to time constraints, the issue will need to be reviewed this fall. The assessor has agreed to meet with Mr. Baumgarten and possibly others to make sure the assessments are equitable. The township board will be provided additional information regarding assessments and procedure.

For these reasons, it is my recommendation to deny the appeal at this time. However, our office will work with the applicant, assessor and board to fully review the assessment. If an adjustment is warranted, Mr. Baumgarten could then file for abatement of taxes on his 2012 assessment. This approach appears to be acceptable to Mr. Baumgarten.

Suggested Motion: "I move to uphold the Monte Baumgarten assessments, as equalized by Durbin Twp and as recommended by the Director of Equalization. However, the Director of Equalization will fully review Mr. Baumgarten's concerns with the local assessor and local board."