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December 13, 2013

Monte Bowman
P.O. Box 27321
Ralston, NE 68127

RE: *File No. 13-R-135; Douglas County Assessor; Monte Bowman, Petitioner*

Dear Mr. Bowman:

We are writing in response to your e-mails submitted via the Attorney General Website/Consumer Protection form on November 5, 2013, in which you have alleged violations of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008, Cum. Supp. 2012, Supp. 2013) ("NPRS") by the Douglas County Assessor ("Assessor"). As is our normal practice with such requests, we contacted the party against whom the complaint was made and requested a response. In this case, we directed your correspondence to Malina M. Dobson, Deputy Douglas County Attorney. On November 20, 2013, we wrote to you indicating that while our preliminary determination in this matter is that you and the individuals listed in the various complaints have not been improperly denied access to public records, we would send you a detailed explanation of our final determination once we have received a response from the county attorney. We received Ms. Dobson's response on behalf of the Assessor on November 22, 2013. In addition, we contacted you by e-mail on November 8, 2013, and requested that you provide us with the public record requests you submitted to the Assessor, and any documentation you might have received in response. On November 9, 2013, you e-mailed the undersigned a series of public record requests, and what appears to be the "property record file" for three properties. We considered all of your correspondence to be a petition for access to records under the NPRS. Our findings in this matter are set forth below.

If you recall, in our disposition letter to you in File No. 11-R-137, dated November 17, 2011, we advised you that the Attorney General has express enforcement authority over the Nebraska Public Records Statutes. Under Neb. Rev. Stat. § 84-712.03, we must determine whether "a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such

sections . . . ." We do not, however, have general enforcement authority over entities of local government, like the Douglas County Assessor. Consequently, your assertions that the Douglas County Assessor is denying property owners a fair and impartial hearing before the Douglas County Board of Equalization by failing to provide complete records fall outside the scope of our authority. Our sole focus, by law, is to determine whether you were denied access to public records or whether the Douglas County Assessor has otherwise failed to comply with the NPRS.

Also as a preliminary matter, we noticed while reviewing your documentation that sometime on or around July 29, 2013, you attempted to send this office a public records petition using the e-mail address nedoj@neb.gov. This e-mail address is not a valid address for this office. Consequently, we did not receive your petition. We bring this to your attention because of the confusion it caused both of our offices.

YOUR ALLEGATIONS

Your petition contains numerous, identical complaints from various property owners, in which each alleges, in pertinent part:

> A request was made to the Douglas County Assessor's Office – Records Division, for a copy of my PROPERTY RECORD FILE. The file should have the contents as specified by Nebraska Statute 77-1331 and Title 350, Chapter 10, Real Property Regulations, Nebraska Administrative Code, subsection 004.01(B)7. The CORRELATION and NARRATIVE SECTIONS are missing from the file.

You further allege in your petition that

> [n]ot only are the records not being released in full but it is being done intentionally. When you file a PROPERTY VALUATION PROTEST the Douglas County Assessor prepares an ASSESSMENT REPORT that is on file with the Clerk of Court.
>
> This is completely different than the PROPERTY PROFILE given to a citizen, property owner, when a request is made for the PROPERTY RECORD FILE with the RECORDS DIVISION of the DOUGLAS COUNTY ASSESSOR'S OFFICE. That file is found on the fourth floor and the ASSESSMENT REPORT is found in the basement at the Clerk's Office.

(Emphasis in originals.)

THE ASSESSOR'S RESPONSE

According to Ms. Dobson, the reason you did not find a "correlation section" or a "narrative statement" in the property record files you obtained is because those items are not required. Title 350, *Nebraska Administrative Code*, Chapter 10, § 004.01B(7) requires that

> "[t]he property record file shall contain a correlation section that summarizes the results of each approach to value that has been completed for the parcel. Also there shall be a narrative statement that provides an explanation of the correlation process and the final estimate of value.

Ms. Dobson further explains that

> [t]he key here is the phrase "summarizes each approach to value." The idea is to provide an explanation of what approaches to value were performed by an assessor for the parcel, and an explanation of what approach was ultimately used and why. However, where only one approach to value for a parcel was used, there is nothing to correlate. Assessors are not required to perform all approaches to value, only the approach or approaches appropriate to that property.

In addition, where only one approach to value has been used to value a parcel, the property record file will contain a worksheet that summarizes that particular valuation process. For example, where the Assessor uses the income approach to value a commercial property, the worksheet would include items such as "rental rate, gross income, vacancy and collection loss, any additional income, expenses or a percentage of expenses used, the net operating income, capitalization rate and final indicated property value." Similar worksheets are provided in the property record file when other approaches to value are performed.[1] Simply stated, there is no need for a section to *correlate* the approaches to value <u>when only one approach to value was employed to value a particular parcel</u>. Since the narrative statement is meant to explain the particular correlation process, this too would be superfluous.

With respect to your allegations relating to the Assessment Report, Ms. Dobson advises that this report is generated by the Assessor when a taxpayer files a protest with the county Board of Equalization ("BOE"). In that event, the report is provided to the BOE referee who will review and decide the filed protest. When an appeal is taken to the Tax Equalization and Review Commission ("TERC"), the Assessor prepares an Assessment Report for the commission, and a copy is provided to the

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[1] Under Neb. Rev. Stat. § 77-112 (2009), "[a]ctual 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."

taxpayer/appellant. She states that the report is essentially a "packet of evidence" and contains additional language "explaining the different approaches to value that could be utilized and an analysis of the approach utilized for the subject property." She further states that this language is not required to be maintained in the property record file, and it is not kept in the property record file for Douglas County properties. Finally, Ms. Dobson indicates that "there is nothing specific to the taxpayer in the Assessment Report that is not contained in the Property Record File for that property."

RELEVANT REGULATORY PROVISION

The required contents of a "property record file" is set out in the *Nebraska Administrative Code* as follows:

> 004.01B Each property record file shall contain the following:
>
> 004.01B(1) A picture of the improvement or main structures if applicable;
>
> 004.01B(2) A sketch of the improvement or main structures if applicable;
>
> 004.01B(3) A ground plan sketch or aerial photograph if there are multiple improvements in addition to the main structures if applicable;
>
> 004.01B(4) School district codes as prescribed by the Department of Revenue, Property Assessment Division;
>
> 004.01B(5) Four or more prior years history of the final assessed value of land and improvements. Also a complete history of each incremental adjustment or change made within an assessment year to the assessed value of the parcel recorded in the file, including the nature of the change and an indication of assessment body or official ordering the change.
>
> 004.01B(6) Other codes created by the assessor that are relevant to the specific parcel, such as coded expressions for the legal description, account numbers or other identifiers.
>
> 004.01B(7) The property record file shall contain a correlation section that summarizes the results of each approach to value that has been completed for the parcel. Also there shall be a narrative statement that

provides an explanation of the correlation process and the final estimate of value.[2]

DISCUSSION

The Nebraska Public Records Statutes generally allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of records in certain circumstances. Under those statutes, every record "of or belonging to" a public body is a public record which individuals may obtain a copy of unless the custodian of the record can point to a specific statute which allows the record to be kept confidential. *A public body is not required, however, to create documents that do not otherwise exist, or to answer questions made to the public body under the guise of a public records request.*

With those principles in mind, we have considered your allegations against the Douglas County Assessor. To reiterate, you have alleged that the Assessor violated the NPRS by failing to provide you and the other property owners identified in your petition copies of the "correlation section" and "narrative statement" in response to your requests for the property record file, and by failing to include the Assessment Report when fulfilling your requests for the property record file. Based on the record before us, we find both allegations groundless.

It appears to us that the Douglas County Assessor has provided you and the other individuals listed in the various complaints precisely what you asked for—the contents of the property record file. As explained on page 2 above, you did not receive a correlation section or a narrative statement in response to a request for a property record file because there was only one approach to value for that particular property, and those documents do not exist. Moreover, the Assessor is under no obligation to create documents for you. We believe that as long as you received the other items delineated in Title 350 NAC Ch. 10, § 004.01B *et seq.*, including the worksheet detailing the approach to value for a particular property, the Assessor has fully complied with the NPRS.[3]

We find your second allegation relating to the Assessor's intentional withholding of the Assessment Report even less plausible. While we can see why you might question the omission in the property record file of a "correlation section" and "narrative

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[2] Nebraska Department of Revenue, Property Assessment Division, Title 350, *Nebraska Administrative Code*, Chapter 10 - Real Property Regulations, §§ 004.01B(1) through 004.01B(7).

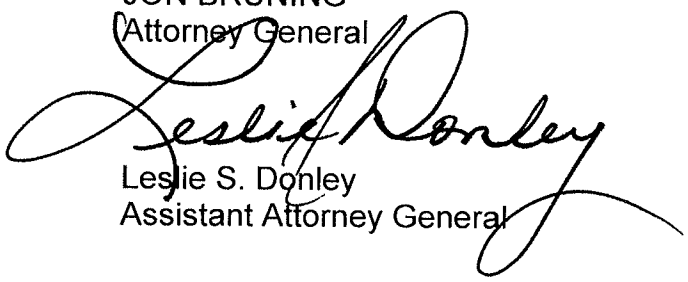
[3] We also believe that a brief inquiry on your part would have explained why these sections were not contained in the requested files, and would have saved you and your clients considerable time and effort.

statement" where the regulation at issue expressly references those items, here there are no regulatory provisions relating to "Assessment Reports." As explained by Ms. Dobson, an Assessment Report is a separate document generated by the Assessor once a protest/appeal is filed with the BOE and TERC, respectively. In the present case, you have provided us nothing to support your allegation that you should have received an "Assessment Report" when requesting a "property record file." In addition, there is nothing in the file which indicates that you requested an "Assessment Report" and were denied access to it. You only allege that you did not receive it when requesting a property record file. Consequently, under these circumstances, there is no basis to conclude that you were unlawfully denied access to public records by the Douglas County Assessor.

Since you have received the records you requested—i.e., the contents of numerous property record files—we see no reason to continue our investigation, and we are closing this file. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Malina M. Dobson

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