



## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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June 23, 2022

PJ Jacobson, Chairman  
Dawson County Board of Commissioners  
700 N. Washington Street, Room A  
Lexington, NE 68850

Dear Mr. Jacobson:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the tax-exempt status of real property owned by several economic development corporations in Dawson County (County). As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested certain information from the County. Based upon the outcome of this preliminary planning work, including an analysis of the information received, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

Nevertheless, during the preliminary planning work, the APA noted a certain issue that merits corrective action.

### **Background Information**

Dawson County, Nebraska, (County) is a political subdivision established under and governed by the laws of the State of Nebraska (State). The County Board of Commissioners (Board) is the governing body responsible for exercising financial accountability and control over activities relevant to the operations of the County. Board members are elected by the public and have broad decision-making authority, including the power to levy taxes, the ability to exert significant influence over all County operations, and primary responsibility for related fiscal matters.

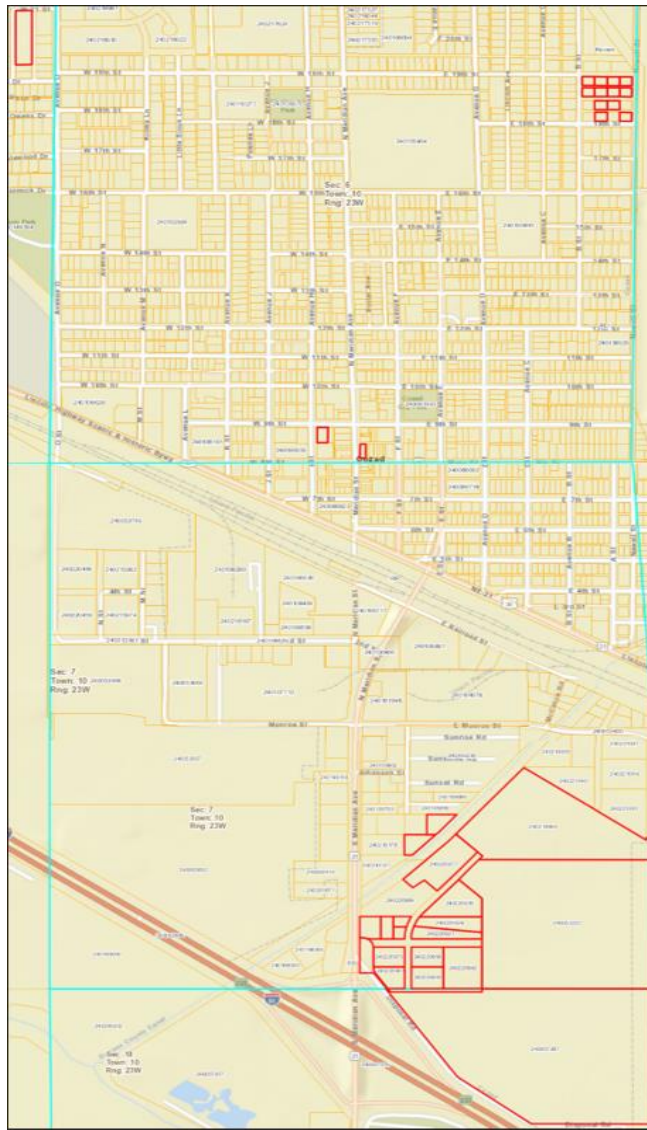
The following cities and villages are located within the County's boundaries: Gothenburg, Lexington, Cozad, Farnam, Overton, Sumner, and Eddyville.

### **Comment and Recommendation**

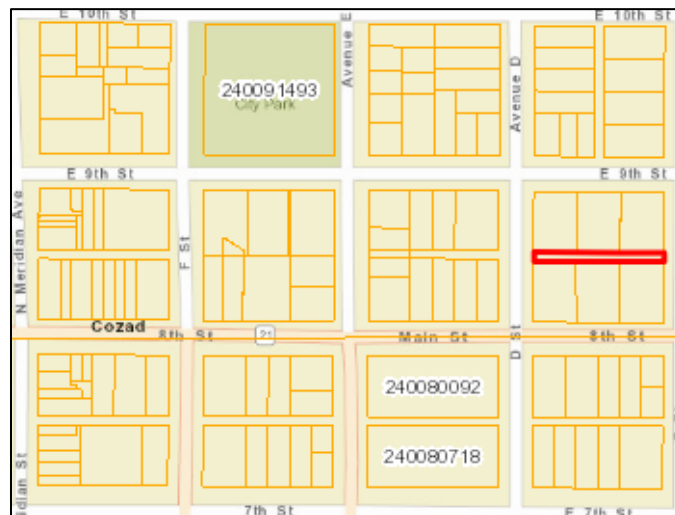
#### **Tax Exempt Status of Economic Development Organizations**

Per the County's Geographic Information System (GIS) website (<https://dawson.gworks.com/>), the following organizations own real property within the County as of May 23, 2022:

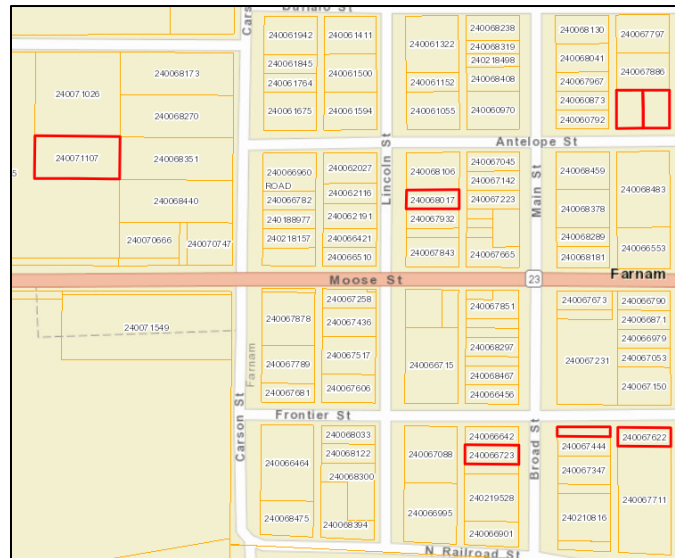
- ***Cozad Development Corporation:*** This organization owns 34 parcels in the Village of Cozad, shown below; all of these properties have assessed values. According to the Nebraska Secretary of State's website, this organization is a non-profit corporation established in 1982.



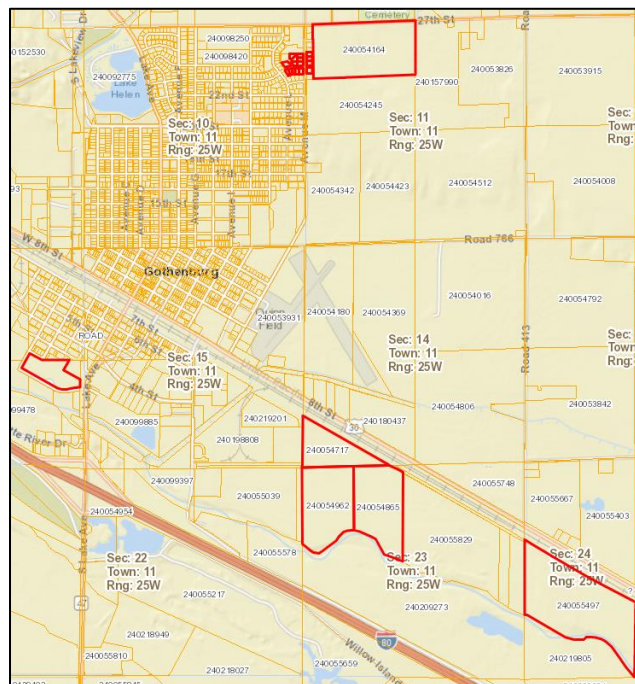
- **Cozad Housing Development Corporation:** This organization owns one parcel in the Village of Cozad, shown below; this parcel has an assessed value. According to the Nebraska Secretary of State’s website, this organization is a non-profit corporation established in 1991.



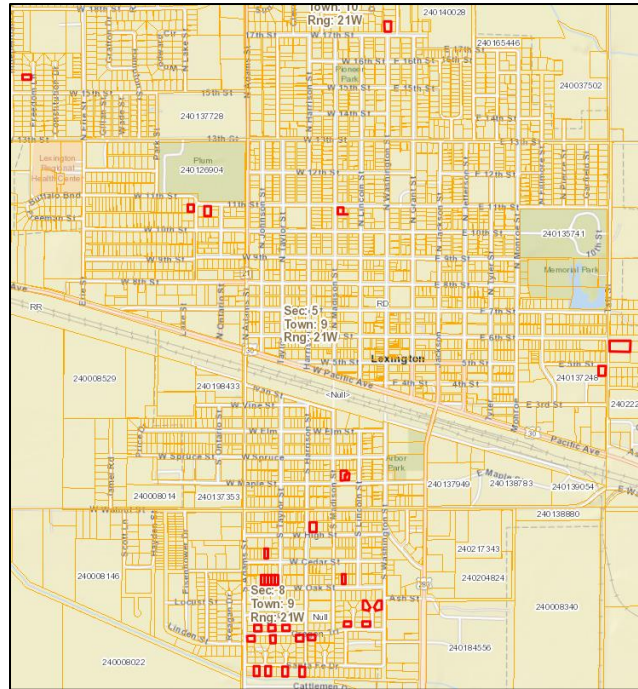
- Farnam Economic Development Corporation:** This organization owns seven parcels in the Village of Farnam, shown below; none of these properties have an assessed value. According to the Nebraska Secretary of State’s website, this organization is a non-profit organization established in 1981.



- Gothenburg Improvement Company:** This organization owns 22 parcels in the City of Gothenburg, shown below; all of these properties have assessed values. According to the Nebraska Secretary of State’s website, this organization is a non-profit corporation established in 1961.



- **Lexington Housing Development Corporation:** This organization owns 32 parcels in the Village of Lexington, shown below; none of these properties have an assessed value. According to the Nebraska Secretary of State’s website, this organization is a non-profit corporation established in 2007.



A review of the Nebraska Secretary of State’s online “Corporate and Business Search,” (<https://www.nebraska.gov/sos/corp/corptestsearch.cgi?nav=search>) reveals that each of the five entities listed above is designated as a “Non Profit (Dom) Corp” with a “Public Benefit” type classification.

According to the County Assessor, nearly all properties owned by these economic development organizations within the County – except for certain parcels located in the Cities of Cozad and Gothenburg – have been exempted from property taxes. However, the County was unable to provide the APA with documentation to support that such property exemptions were granted in accordance with State statute.

As demonstrated by the numerous statutes and administrative rules and regulations cited below, the requirements for attaining a property tax exemption are rather extensive – meaning that compliance with all of the prescribed procedures should have generated a considerable amount of paperwork. Nevertheless, the County was unable to provide any documentation whatsoever to support that any of the five economic development organizations had gone through the mandatory property tax exemption application process, received the requisite approval from the County Board of Equalization, or made the mandatory annual post-approval filings with the County Assessor. The lack of documentation includes relevant meeting minute references – as necessitated by Neb. Rev. Stat. § 84-1413(1) (Supp. 2021) of the Open Meetings Act, which directs the meeting minutes of a public body to show, among other things, “the substance of all matters discussed.”

The requirements for property tax exemptions are set out in Chapter 77, Article 2, of the Nebraska Revised Statutes. To start, aside from land held in fee title or beneficially owned by the State and its governmental subdivisions, Neb. Rev. Stat. § 77-202 (Cum. Supp. 2020) authorizes property tax exemptions for the following real property:

*(c) Property owned by and used exclusively for agricultural and horticultural societies;*

*(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per*

*week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109[.]*

An organization wishing to obtain a tax exemption for its property must first go through the application process with the County Assessor for the county in which the property is located. This tax exemption application process is laid out in Neb. Rev. Stat. § 77-202.01 (Supp. 2021), as follows:

*(1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property . . . shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner. Applications that lack an estimated valuation, or any other required information, shall result in the denial of the requested exemption. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before March 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.*

*(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.*

Upon receiving an application for property tax exemption, the County Assessor will make a recommendation to the County Board of Equalization, which will decide whether to grant or deny the tax exemption for the property. Neb. Rev. Stat. § 77-202.02 (Reissue 2018) states, in relevant part, the following:

*The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.*

Neb. Rev. Stat. § 77-202.03 (Cum. Supp. 2020) requires additional filings to be made for exempt properties:

*(1) A properly granted exemption of real or tangible personal property . . . provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.*

*(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property . . . shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. . . .*

\* \* \* \*

*(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.*

*The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.*

\* \* \* \*

*(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. An electronic copy of the list of real property exemptions and a copy of the proof of publication shall be forwarded to the Property Tax Administrator on or before November 1 of each year.*

Title 350 Nebraska Administrative Code (NAC) Chapter 40, "Property Tax Exemption Regulations" (7-3-2013), part of the administrative rules and regulations promulgated by the Nebraska Department of Revenue, Property Tax Division, provide guidance on educational, religious, charitable, and cemetery property tax exemptions. In particular, Title 350 NAC Chapter 40-006 says, in relevant part, the following:

*006.01 Any organization or society seeking a property tax exemption for real or personal property, other than motor vehicles, must file an Exemption Application for Tax Exemption on Real and Personal Property by Qualifying Organizations, Form 451, on or before December 31 of the year preceding the year for which the exemption is sought, with the county assessor in which the property is located. The county assessor will then make a recommendation of approval or denial to the county board of equalization. If the exemption is approved by the county board of equalization, it will continue for a period of four years, beginning with years evenly divisible by four. The first year in each period is known as an application year (for example, 2012, 2016, 2020, etc.). If application for exemption is made and approved in an intervening year, the exemption will continue for the remainder of the applicable four-year period.*

\* \* \* \*

*006.01B To continue the exemption for a succeeding four-year period, an organization or society which previously had been granted an exemption, other than motor vehicles, must file the Form 451 with the county assessor on or before December 31 prior to an application year.*

\* \* \* \*

*006.02 An organization or society which has been allowed an exemption for real or personal property, other than motor vehicles, must file a Statement of Reaffirmation of Tax Exemption for Use When Applying for Continued Exemption for Qualifying Organizations, Form 451A, with the county assessor on or before December 31 prior to each intervening year. The reaffirmation statement must certify that the ownership and use of the exempted property has not changed from the ownership and use of the property at the time of the application for the application year.*

\* \* \* \*

*006.06 The county assessor must maintain a list of the applications from organizations seeking tax exemption, descriptions of the property, and his or her recommendations to the county board of equalization as to whether the property is taxable or exempt.*

\* \* \* \*

*006.07 The county board of equalization must hold a public hearing on all applications for exemption to determine whether to allow or deny an exemption. The hearing will be held after the county board of equalization gives 10 days notice to the applicant at the address on the application. No exemption will be granted or denied by the county board of equalization until after the required hearing is held.*

Each of the economic development organizations addressed herein may have been eligible to receive tax exemptions for their properties. Due to the County's total lack of supporting documentation, however, the APA is unable to verify whether the property tax exemptions at issue were properly granted.

Good internal controls require procedures to ensure that the appropriate County authorities create and maintain proper documentation to support compliance with all applicable statutory and administrative requirements for granting property tax exemptions. Without such procedures, there is an increased risk for the unlawful granting of property tax exemptions and the attendant loss of County funds.

We recommend the implementation of procedures to ensure that the appropriate County authorities create and maintain documentation to support compliance with the applicable statutory and administrative requirements for granting property tax exemptions.

\* \* \* \* \*

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge gained during our work to make comments and suggestions that we hope will be useful to the County.

Draft copies of this letter were furnished to the County to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. The County declined to respond.

This communication is intended solely for the information and use of the County and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this communication is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Deputy Auditor  
Mason Culver – Auditor-In-Charge

Sincerely,



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cc: Dawson County Attorney