

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Sandra L. Fournier,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 11R 461 & 13R 866

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

For the Appellant:
Sandra L. Fournier,
Pro Se.

For the Appellee:
Jimmy Pinkham III,
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located at 5747 North 167th Circle, Douglas County, Nebraska. The parcel is improved with a 1,392 square foot townhome, built in 2002. The legal description of the parcel and the property record files for the Subject Property are found at Exhibit 3 for tax year 2011 and at Exhibit 4 for tax year 2013.¹

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$156,300 for both tax years 2011 and 2013.² Sandra L. Fournier (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$144,000 for tax year 2011³, and \$144,500 for tax year 2013.⁴ The Douglas County Board determined that the taxable value for both tax years 2011 and 2013 was \$156,300.⁵

¹ No appeal was filed with the Commission for tax year 2012.

² See, E1 & E2.

³ See, E3:38.

⁴ See, E4:40.

⁵ See, E1 & E2.

The Taxpayer appealed the decisions 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 December 19, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁶ 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."⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹¹ 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 arbitrary or unreasonable.¹²

⁶ 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).

⁷ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.”¹³ 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.”¹⁴ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁵

IV. VALUATION

A. Applicable 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.¹⁶

“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.”¹⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ 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.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

¹³ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *Id.*

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

Sandra L. Fournier, the owner of the Subject Property, testified that the Subject Property was overvalued as compared to comparable properties because: (1) the Assessor failed to take into account all of the deferred maintenance associated with the Subject Property; (2) the Assessor had incorrectly increased the actual value of the Subject Property based upon its proximity to a golf course; and (3) the cost detail for the Subject Property indicated that the Subject Property was assessed for improvement characteristics that did not exist on the Subject Property.

Fournier testified that the concrete patio, kitchen floor, and windows located on the Subject Property were damaged and required repair. Fournier asserted that the Subject Property would not sell unless these items were repaired, and supplied estimates for the repair of the items totaling \$4,614.29.²² She asserted that the actual value of the Subject Property should be reduced by these repair cost estimates.

Fournier also asserted that the Subject Property had not been updated since its construction in 2002. She opined that this should also result in a reduced value for the Subject Property. However, Fournier conceded that the items of deferred maintenance and lack of updates were insufficient to justify a reduction in the condition rating of the improvements located on the Subject Property.

Fournier asserted that the Subject Property was dissimilar to adjacent properties that share property lines with the golf course. Fournier admitted that it was possible to view a portion of the golf course from the Subject Property, but she asserted that the Subject Property's location was meaningfully different from her neighbors.²³ Fournier provided property record cards for alleged comparable properties in the same neighborhood and within one block of the Subject Property which shared no property lines with or meaningful view of the golf course.²⁴ She asserted that the Subject Property should receive the same assessed land value as these properties.

Finally, Fournier asserted that the Cost Details for the Subject Property indicate that the Subject Property was erroneously assessed for characteristics that were not present on the Subject Property. The Commission notes that the Assessor provided a separate Cost Detail for

²² E16. (\$1,950 patio + \$1,136 kitchen floor + \$1,528.29 windows = \$4,614.29).

²³ See, E4:12 (map of the Subject Property's development which indicates that the Subject Property lies at the end of a cul-de-sac and does not share a property line with the golf course while adjacent properties do).

²⁴ See, E7 to E10, E12 to E15, E18, and E19.

each tax year.²⁵ Fournier asserted that the Subject Property should have been assessed for 36 square feet of Slab Roof Ceiling instead of 56 square feet for tax year 2011.²⁶ She also asserted that the Assessor double counted 120 square feet of Open Slab in tax year 2013, because the 120 square feet of Open Slab listed on the 2013 Cost Detail was included in a separate line item of 316 square feet for Open Slab.²⁷ Fournier confirmed that the Subject Property has a lawn sprinkler system and some brick veneer framing the garage.²⁸

Kevin Corcoran, a residential appraiser with the Assessor, testified that he inspected the Subject Property in 2010. Corcoran defined an Open Slab as a patio, and he defined a Slab Roof Ceiling as a patio covered by a roof. Corcoran agreed that the Slab Roof Ceiling should total 36 square feet rather than 56 square feet. He also asserted that following the inspection additional characteristics were added to the Subject Property including an increased Open Slab area, brick veneer, and a lawn sprinkler system.²⁹ Corcoran agreed that the line item of 120 square feet of Open Slab in the 2013 Cost Detail should be removed, because the 120 square feet Open Slab listed on the 2013 Cost Detail was most likely included in the separate line item 316 square foot Open Slab.³⁰ Corcoran also testified that the additions to the 2013 Cost Detail of an adjustment for brick veneer should also be applied to the Subject Property for tax year 2011 since that characteristic was present in both tax years.³¹

Corcoran asserted that the effect of the parcel being located next to the golf course would be included in the land value based upon sales of similar properties in the Subject Property's market area. He testified that the effect on the land value is determined by looking at paired sales of similar structures or vacant lots where one lot is located in close proximity to a golf course and the other is not. The Assessor compares the sale prices of the paired properties to determine if there is any effect on the sale price of a parcel due to proximity to a golf course. Corcoran testified that the market data for the Subject Property's market area indicated that the parcels in close proximity to golf courses commanded higher sale prices. Corcoran testified that he did not have the specific information used to derive the Subject Property's land value. Corcoran only

²⁵ See, E3:13 (tax year 2011); See also, E4:13 (tax year 2013).

²⁶ See, E3:13.

²⁷ See, E4:13.

²⁸ See, E4:2 (picture of Subject Property showing brick veneer framing the garage).

²⁹ See, E4:13.

³⁰ See, E4:13.

³¹ See, E4:13.

testified concerning the general method used by the Assessor to determine the impact of proximity to a golf course on the actual value of real property.

Corcoran further testified that the items of deferred maintenance were taken into account in the condition rating of the Subject Property. Corcoran asserted that the items of deferred maintenance and lack of upgrades were not sufficient to result in a reduction in the condition rating of the Subject Property because the items of deferred maintenance were typical of Good condition properties in the neighborhood. Corcoran testified that the physical depreciation associated with the Subject Property is derived based on its effective age and on observations made during a physical inspection.

The Commission notes that while there are in evidence different Cost Details for tax year 2011 and tax year 2013, the Assessor did not use the 2013 Cost Detail to derive the assessed value of the Subject Property for tax year 2013. Instead, the Assessor assessed the Subject Property in tax year 2013 at the same value as tax year 2011 even though the 2013 Cost Detail would support a higher actual value.³²

C. Analysis

Fournier asserted that the actual value of the Subject Property should be decreased by the cost required to replace water-damaged kitchen floors, a damaged patio, and damaged windows. “Physical depreciation is loss in value due to physical deterioration.”³³ There are several methods for determining the applicable physical depreciation for improvements to real property.³⁴ The Assessor used the effective age method and derived an applicable 5% depreciation for the Subject Property, or a total depreciation of \$6,131.³⁵ The estimates to repair the items of deferred maintenance submitted by Fournier totaled \$4,614.59,³⁶ or \$1,516.41 less than the Assessor’s assigned depreciation.³⁷

³² See, E4:13-14.

³³ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

³⁴ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 257-302 (3rd ed. 2010).

³⁵ See, E3:13. The cost Detail for the Subject Property and all comparable properties considered in this appeal states depreciation with a rounded percentage. With respect to every Cost Detail reviewed by the Commission and discussed in this Decision and Order, the Commission calculated and then used the unrounded depreciation percentage when making corrections to the actual value of the property.

³⁶ See, E 17:1 (chart with list of all repair costs); See also, E16 (estimates of repair costs).

³⁷ \$6,131 - \$4,614.59 = \$1,516.41.

Further, under the effective age method, specific items of deferred maintenance do not directly contribute to the depreciation factor.³⁸ Instead, an all-encompassing depreciation factor is derived based upon the percentage of economic life remaining in the real property.³⁹ The depreciation factor is equal to the portion of the total economic life already consumed.⁴⁰ The method assumes that all of the applicable depreciation would be included in the calculation.⁴¹

Corcoran testified that while specific items of deferred maintenance do not affect the depreciation calculation, they may affect the condition rating of improvements, which in turn affects the actual value assigned to real property. Corcoran testified that he personally inspected the Subject Property and that the items of deferred maintenance on the Subject Property were similar to items of deferred maintenance found at other properties rated at Good condition in the Subject Property's neighborhood. The Commission notes that the Subject Property was rated as Good condition for purposes of assessment in tax years 2011 and 2013.⁴² Fournier likewise admitted that the items of deferred maintenance are insufficient to require a decrease in the condition rating.

The Commission finds that the depreciation and condition ratings assigned to the Subject Property for tax years 2011 and 2013 were reasonable. The total depreciation assigned to the Subject Property exceeded Fournier's estimates of the costs to repair the items of deferred maintenance, and both parties agreed to the condition rating used by the Assessor to determine the actual value of the Subject Property.

Both parties also agreed that there were errors on the Cost Details for both tax years 2011 and 2013. For tax year 2011, the Subject Property was assessed for 20 square feet of Slab Roof Ceiling that were not present on the Subject Property. The Subject Property was not assessed for the brick veneer framing the garage, the lawn sprinkler system, and 196 square feet of open slab. After these corrections to the 2011 Cost Detail, the indicated actual value of the Subject Property is \$157,838⁴³ or \$1,538 more than the assessment for tax year 2011.⁴⁴

³⁸ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 272-74 (3rd ed. 2010).

³⁹ See, *id.*

⁴⁰ See, *id.*

⁴¹ See, *id.*

⁴² See, E3:13 and E4:13.

⁴³ Exhibit 3:13. \$92,888 (building area) + \$696 (Slab Roof Ceiling) + \$18,658 (Basmt Conc 9 ft) + \$13,615 (Attached) + \$1,707 (Wood Deck) + \$1,914 (Walkout) + \$1,387 (Open Slab) + \$3,445 (Add Ons (See, E3:14)) + \$2,771 (Plumbing adjustment) - \$407 (Rough In adjustment) + \$1,100 (Brick Veneer) + \$1 (lawn sprinkler system) = \$137,775 rounded replacement cost new (RCN). \$137,775 (RCN) x .045 depreciation = \$6,200 rounded depreciation. \$137,775 (RCN) - \$6,200 depreciation = \$131,575 (RCN less depreciation). \$131,575 (RCN less depreciation) x 1.04 neighborhood adjustment = \$136,838 improvement value. \$136,838 improvement value + \$21,000 land value = \$157,838 revised actual value.

For tax year 2013, the parties agreed that the Subject Property was overassessed for 120 square feet of Open Slab. With this correction, the assessed value of the Subject Property for tax year 2013 is \$160,817 rounded,⁴⁵ or \$4,517 more than the assessment for tax year 2013.

Concerning the taxable value of the land component of the Subject Property, both parties testified concerning the impact of the Subject Property's proximity to the golf course on the actual value of the Subject Property. For tax year 2011, the Subject Property's land value was equal to the land value of parcels that did not have a view of the golf course and did not share a property line with the golf course,⁴⁶ and was less than parcels that had a view of the golf course and shared a property line with the golf course.⁴⁷ For tax year 2013, the Subject Property's land value was more than parcels that did not have a view of the golf course and did not share a property line with the golf course,⁴⁸ but was less than parcels that shared a property line with the golf course.⁴⁹

The Commission finds that the Subject Property has a view of the golf course that brings greater value to the Subject Property as compared to all of the other properties in the neighborhood that have no meaningful view of the golf course. The Commission also finds that the Subject Property has a view of the golf course that brings lesser value to the Subject Property as compared to parcels that share a property line with the golf course.

Corcoran explained the method for determining whether the proximity to a golf course impacts the actual value of a parcel. The method described by Corcoran is a commonly accepted mass appraisal method. Based upon all of the evidence received, the Commission finds that there is insufficient evidence to adjust the Subject Property's land value for either tax year 2011 or tax year 2013.

⁴⁴ \$157,838 revised actual value - \$156,300 noticed value = \$1,538.

⁴⁵ See, E4:13. \$92,888 (building area) + \$765 (Slab Roof Ceiling) + \$18,658 (Basmt Conc 9 ft) + \$13,615 (Attached) + \$1,707 (Wood Deck) + \$1,914 (Walkout) + \$1,388 (Open Slab) + \$3,445 (Add Ons (See, E4:15)) + \$2,771 (Plumbing adj.) - \$407 (Rough in adj) + \$1,100 (Brick Veneer) + \$1.00 (lawn sprinkler system) = \$137,845 rounded replacement cost new (RCN). \$137,845 (RCN) x .054 depreciation = \$7,444 rounded depreciation. \$137,845 (RCN) - \$7,444 depreciation = \$130,401 (RCN less depreciation). \$130,401 (RCN less depreciation) x 1.04 neighborhood adj. = \$135,617 improvement value. \$135,617 improvement value + \$25,200 land value = \$160,817 revised actual value.

⁴⁶ See, E3:4 (Subject Property's Property Record Card); See also, E3:16 (comparable property); See also, E3:12 (map indicating the location of all of the properties).

⁴⁷ See, E3:23(comparable property); See also, E3:30(comparable property) See also, E3:12 (map indicating the location of all of the properties).

⁴⁸ See, E4:4 (Subject Property's Property Record Card); See also, E4:17 (comparable property); See also, E4:33 (comparable property); See also, E4:12 (map indicating the location of all of the properties).

⁴⁹ See, E4:24 (comparable property); See also, E4:12 (map indicating the location of all of the properties).

The evidence indicates that the Subject Property was underassessed by \$1,538 for tax year 2011. However, the Commission may not order an increase in taxable value from the highest taxable value for which notice was given to the Taxpayer in these appeals.⁵⁰ In these appeals, there is no evidence that the Taxpayer was given notice of any taxable value higher than \$156,300 for the Subject Property for tax year 2011.⁵¹ The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at any amount higher than previously noticed to the Taxpayer by the Assessor, the County Board, or the Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.⁵² The Commission notes that the County Board did not assert during the hearing that the taxable value should be increased above that value previously noticed, and that no notice as would be required by the Commission's Rules and Regulations was ever perfected. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at any amount higher than previously noticed to the Taxpayer by the Assessor, County Board, or Property Tax Administrator for the tax year 2011 appeal. Based upon the foregoing, the Commission finds that the County Board's determination should not be reversed in Case No. 11R 461 because of the valuation error.

The evidence indicates that the Subject Property was underassessed by \$4,517 for tax year 2013.⁵³ It is apparent that the Assessor did not use the information in the 2013 Cost Detail to determine the actual value of the Subject Property for tax year 2013, because the actual value as derived using the 2013 Cost Detail does not equal the 2013 assessed value of the improvements.⁵⁴ The Assessor also increased the land value of the Subject Property from tax year 2011 to tax year 2013.⁵⁵ However, for an unknown reason the Assessor decreased the Subject Property's improvement value in an amount that completely offsets the increase in the land value.⁵⁶ For tax year 2013, the improvement value is therefore not based on either the 2011

⁵⁰ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

⁵¹ See, E1:1.

⁵² 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

⁵³ See, E4:13. *Infra*, FN 45.

⁵⁴ See, E4:13 and E4:4.

⁵⁵ See, E3:4 and E4:4.

⁵⁶ See, E4:4.

or 2013 Cost Details, but instead it is based upon a reduction of the improvement value as calculated based on the 2011 Cost Detail.⁵⁷

The evidence indicates that the actual value of the improvements associated with the Subject Property for tax year 2013 should be based on the corrected 2013 Cost Detail that would support a rounded improvement value of \$135,617.⁵⁸ The total actual value of the Subject Property for tax year 2013, including the land value, should therefore be \$160,817. However, as was discussed above in regard to tax year 2011, the Commission may not order an increase in taxable value from the highest taxable value for which notice was given to the Taxpayer in these appeals.⁵⁹ In these appeals, there is no evidence that the Taxpayer was given notice of any taxable value higher than \$156,300 for the Subject Property for tax year 2013.⁶⁰ The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at any amount higher than previously noticed to the Taxpayer by the Assessor, the County Board, or the Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.⁶¹ The Commission notes that the County Board did not assert during the hearing that the taxable value should be increased above that value previously noticed, and that no notice as would be required by the Commission's Rules and Regulations was ever perfected. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at any amount higher than previously noticed to the Taxpayer by the Assessor, County Board, or Property Tax Administrator for the tax year 2013 appeal. Based upon the foregoing, the Commission finds that the County Board's determination should not be reversed in Case No. 13R 866 because of the valuation errors.

V. EQUALIZATION

A. Applicable 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

⁵⁷ See E1:1, E2:1, E3:15.

⁵⁸ See, E4:13 (after removing the \$562 replacement cost new value for the errant 120 square feet of Open Slab).

⁵⁹ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

⁶⁰ See, E1:1.

⁶¹ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

Constitution.”⁶² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁶³ 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.⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁶⁸ 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].”⁶⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁷⁰

B. Summary of the Evidence

Fournier testified that the Subject Property was not equalized as compared to other similar properties. She provided property record cards for ten similar properties⁷¹ as well as two exhibits she had prepared which summarized comparisons of these properties to the Subject Property.⁷² The Commission has reviewed all of the evidence received in this appeal. With each alleged comparable property, the Assessor used the cost approach.

⁶² *Neb. Const.*, Art. VIII, §1.

⁶³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁶⁴ *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).

⁶⁵ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁶⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁶⁷ *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).

⁶⁸ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁶⁹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

⁷⁰ *Id.* at 673, 94 N.W.2d at 50.

⁷¹ See, E7 to E10, E12 to E15, E18, and E19.

⁷² See, E17 and E20.

Fournier compared the assessed values of the alleged comparable properties and the assessed value of the Subject Property. For tax year 2011, she asserted some of the alleged comparable properties found in Exhibit 8 and Exhibit 9 were not assessed for wood decks and open slabs that were present as of the date of the assessments. Corcoran testified that it was possible that the alleged comparable properties had not been assessed for these features. He asserted that any such mistake would have been attributable to inadvertent errors.

C. Analysis

At least two tests exist for determining whether property within a taxing district is equalized: (1) are substantially similar properties valued at materially different levels of value;⁷³ and (2) does a comparison of the ratio of assessed value to actual value indicate that properties are assessed at different levels of value.⁷⁴ To determine if substantially similar properties are valued at materially different levels of value, the Commission may review the assessed value per square foot of gross living area of the Subject Property and comparable properties.⁷⁵ The Commission notes that the cost approach calculations contained in the Subject Property's property record card, the comparable properties' property record cards, and the testimony at the hearing indicates that the Subject Property and comparable properties have different physical characteristics, locations, and amenities such that a direct comparison of the assessed value per square foot is not the appropriate approach. These different features would create inherent differences in the actual value of the properties. The Commission finds that the Subject Property and the comparable properties are not substantially similar for purposes of comparing the assessed value per square foot.

The Subject Property was assessed at \$156,300 for tax year 2011.⁷⁶ The evidence indicates that the actual value of the Subject Property as of tax year 2011 was \$157,838.⁷⁷ This results in a rounded ratio of assessed value to actual value of 99.03% for the Subject Property.⁷⁸

The assessed value for tax year 2011 of the alleged comparable property found at Exhibit 8 was \$152,100.⁷⁹ The Commission finds that the corrected actual value of the comparable

⁷³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁷⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁷⁵ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁷⁶ See, E1:1.

⁷⁷ *Infra*, FN 41.

⁷⁸ $\$156,300/\$157,838 = .99025583192$.

⁷⁹ See, E8:7.

property found at Exhibit 8 is \$154,976 for tax year 2011.⁸⁰ This results in a rounded ratio of assessed value to actual value of 98.14% for the alleged comparable property in Exhibit 8.⁸¹ The assessed value for tax year 2011 of the alleged comparable property found at Exhibit 9 was \$171,800.⁸² The Commission finds that the corrected actual value of the comparable property found at Exhibit 9 is \$174,984 for tax year 2011.⁸³ This results in a rounded ratio of assessed value to actual value of 98.18% for the alleged comparable property in Exhibit 9.⁸⁴ The evidence therefore shows that for tax year 2011 the Subject Property was assessed at a rate within 1% of the alleged comparable properties.

The burden imposed on the taxpayer in order to obtain equalization relief requires proof by clear and convincing evidence that the Subject Property's assessed value is grossly excessive when compared to the assessed values of other similar properties.⁸⁵ The Commission finds that the difference in the ratio of assessed value to actual value of the Subject Property as compared to comparable properties is not grossly excessive. The Commission finds that there is not sufficient evidence to support equalization relief for tax year 2011.

The Subject Property was assessed at \$156,300 for tax year 2013.⁸⁶ The evidence indicates that the actual value of the Subject Property as of tax year 2013 was \$160,817.⁸⁷ This results in a rounded ratio of assessed value to actual value of 97.19% for the Subject Property.⁸⁸ The assessed value for tax year 2013 of the alleged comparable property found at Exhibit 13 was

⁸⁰ \$89,666 (building area) + \$13,637 (Attached) + \$18,737 (Basmt Conc 9 ft) + \$765 (Slab Roof Ceiling) + \$911 (Open Slab) + \$1,943 (Wood Deck) + \$2,771 (Plumbing adjustment) + \$3,445 (Add Ons) - \$407 (Rough In Adjustment) + \$1,080 (sprinkler system) + \$1,100 (Brick Veneer) = \$133,648 replacement cost new (RCN). \$133,648 (RCN) x .0361 depreciation = \$4,825 rounded depreciation. \$133,648 (RCN) - \$4,825 depreciation = \$128,823 (RCN less depreciation). \$128,823 (RCN less depreciation) x 1.04 neighborhood adjustment = \$133,976 improvement value. \$133,976 improvement value + \$21,000 land value = \$154,976 (corrected actual value).

⁸¹ \$152,100/\$154,976 = .9814.

⁸² See, E9:8.

⁸³ \$89,666 (building area) + \$19,592 (Finished) + \$13,637 (Attached) + \$765 (Slab Roof Ceiling) + \$18,737 (Basmt Conc 9 ft) + \$2,310 (Open Slab) (See Exhibit 14) + \$911 (Wood Deck) + \$2,771 (Plumbing adjustment) + \$3,445 (Add Ons) - \$407 (Rough In adjustment) + \$1,100 (Brick Veneer) + \$1,080 (Sprinkler System) = \$153,607 rounded replacement cost new (RCN). \$153,607 (RCN) x .0361 depreciation = \$5,545 rounded depreciation. \$153,607 (RCN) - \$5,545 depreciation = \$148,062 (RCN less depreciation). \$148,062 (RCN less depreciation) x 1.04 neighborhood adjustment = \$153,984 improvement value. \$153,984 improvement value + \$21,000 land value = \$174,984 corrected actual value.

⁸⁴ \$171,800/\$174,984 = .98180405065.

⁸⁵ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

⁸⁶ See, E2:1.

⁸⁷ \$92,888 (building area) + \$18,658 (Basmt Conc 9 ft) + \$13,615 (Attached) + \$1,707 (Wood Deck) + \$1,914 (Walkout) + \$765 (Slab Roof Ceiling) + \$1,388 (Open Slab) + \$3,445 (Add Ons) + \$2,771 (Plumbing Adjustment) - \$407 (Rough In Adjustment) + \$1 (sprinkler system) + \$1,100 (Brick Veneer) = \$136,744 replacement cost new (RCN). \$136,744 (RCN) x .054 depreciation = \$7,444 rounded depreciation. \$136,744 (RCN) - \$7,444 depreciation = \$130,401 (RCN less depreciation). \$130,401 (RCN less depreciation) x 1.04 neighborhood adj. = \$135,617 improvement value. \$135,617 improvement value + \$25,200 land value = \$160,817 corrected actual value.

⁸⁸ \$156,300/\$160,817 = .9719.

\$152,100.⁸⁹ The Commission finds that the corrected actual value of the comparable property found at Exhibit 13 is \$153,909 for tax year 2013.⁹⁰ This results in a rounded ratio of assessed value to actual ratio of 98.82% for the alleged comparable property in Exhibit 13.⁹¹ The assessed value for tax year 2013 of the alleged comparable property found in Exhibit 14 was \$171,800.⁹² The Commission finds that the corrected actual value of the comparable property found at Exhibit 14 is \$173,918 for tax year 2013.⁹³ This results in a rounded ratio of assessed value to actual value of 98.78% for the alleged comparable property in Exhibit 14.⁹⁴ The evidence therefore shows that for tax year 2013 the Subject Property was assessed at a ratio lower than both comparable properties.

The burden imposed on the taxpayer in order to obtain equalization relief requires proof by clear and convincing evidence that the Subject Property's assessed value is grossly excessive when compared to the assessed values of other similar properties.⁹⁵ The Commission finds that the difference in the ratio of assessed value to actual value of the Subject Property as compared to the comparable properties is not grossly excessive. The Commission finds that there is not sufficient evidence to support equalization relief for tax year 2013.

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 determinations. The Commission also finds that there is clear and convincing evidence that the

⁸⁹ See, E13:7.

⁹⁰ \$89,666 (building area) + \$13,637 (Attached) + \$18,737 (Basmt Conc 9 ft) + \$765 (Slab Roof Ceiling) + \$911 (Open Slab) + \$1,943 (Wood Deck) + \$3,445 (Add Ons) + \$2,771 (Plumbing adjustment) – \$407 (Rough In adjustment) + \$1,100 (Brick Veneer) + \$1 (sprinkler system) = \$132,569 replacement cost new (RCN). \$132,569 (RCN) x .036 depreciation = \$4,772 rounded depreciation. \$132,569 (RCN) - \$4,772 depreciation = \$127,797 (RCN less depreciation). \$127,797 (RCN less depreciation) x 1.04 neighborhood adjustment = \$132,909 improvement value. \$132,909 improvement value + \$21,000 land value = \$153,909 corrected actual value.

⁹¹ \$152,100/\$153,909 = .9882.

⁹² See, E14:8.

⁹³ \$89,666 (building area) + \$19,592 (Finished) + \$13,637 (Attached) + \$765 (Slab Roof Ceiling) + \$18,737 (Basmt Conc 9 ft) + \$2,310 (Open Slab) + \$911 (Wood Deck) + \$3,445 (Add Ons) + \$2,771 (Plumbing adjustment) – \$407 (Rough In Adjustment) + \$1,100 (Brick Veneer) + \$1 (Sprinkler System) = \$152,528 rounded replacement cost new (RCN). \$152,528 (RCN) x .036 depreciation = \$5,491 rounded depreciation. \$152,528 (RCN) - \$5,491 depreciation = \$147,037 (RCN less depreciation). \$147,037 (RCN less depreciation) x 1.04 neighborhood adjustment = \$152,918 improvement value. \$152,918 improvement value + \$21,000 land value = \$173,918 corrected actual value.

⁹⁴ \$171,800/\$173,918 = .9878.

⁹⁵ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

County Board's determinations of taxable value are arbitrary or unreasonable.⁹⁶ The Commission finds that the evidence would support a higher actual value for the Subject Property. However, proper procedures were not followed to allow the Commission to increase the Subject Property's taxable value.

For all of the reasons set forth above, the taxable value determinations made by the County Board for the Subject Property for tax years 2011 and 2013 should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for both tax years 2011 and 2013 are affirmed.
2. The taxable value of the Subject Property for each tax year 2011 and 2013 is \$156,300.
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.).
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 years 2011 and 2013.
7. This Decision and Order is effective for purposes of appeal on February 6, 2015.⁹⁷

Signed and Sealed: February 6, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

⁹⁶ Taxable 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 at the protest proceeding.

⁹⁷ 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.