

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Steven L. Gosch,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 11R 076

Decision Affirming  
County Board of Equalization

**BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property is a residential parcel located at 512 South 160<sup>th</sup> Street, Omaha, Nebraska, with a legal description of: PACIFIC MEADOWS LOT 211 BLOCK 0 76X120.
2. The Douglas County Assessor assessed the Subject Property at \$280,600 for tax year 2011.
3. Steven L. Gosch (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a valuation of \$232,200.
4. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was 280,600 for tax year 2011.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the Commission’s hearing room, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth, on October 25, 2012.
7. Suzette L. Gosch, the Taxpayer’s spouse (also referred to herein as the “Taxpayer”), was present at the hearing.
8. Larry Thomsen, an employee of the Douglas County Assessor’s Office, was present for the County Board.

**STANDARD OF REVIEW**

9. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>1</sup> “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.”<sup>2</sup>
10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon

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<sup>1</sup> See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>2</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

11. 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.<sup>5</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

### GENERAL VALUATION LAW

13. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>7</sup>
14. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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. Actual 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.<sup>8</sup>

### VALUATION ANALYSIS

15. The County Board submitted an Assessment Report for tax year 2011 at the hearing. The Property Record Profile contained in the Assessment Report for the Subject Property indicates that the County Board’s \$280,600 determination for tax year 2011 includes \$28,000 for land and \$252,600 for the improvement component.
16. The County’s Assessment Report indicates that the County Board’s \$252,600 determination attributable to the Subject Property’s improvement component for tax year

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<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

2011 is based on a sales comparison approach mass appraisal model derived from market area arm's-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.<sup>9</sup> The Assessment Report for tax year 2011 contains a document entitled "Market Calculation Detail" that sets forth the value assigned to each of the various mass appraisal model characteristics relating to the Subject Property's improvement component.

17. Larry Thomsen, an employee of the Douglas County Assessor's Office, indicated that sales in the "two-year look-back period" prior to each tax year are reviewed for purposes of constructing the County's model. Thus, for tax year 2011, the County's model is derived from market area sales that occurred from July 1, 2008 to June 30, 2010.
18. The Property Record Profile indicates that the Subject Property is located in Neighborhood 68, Subdivision 29156, and is included on County map number 68-1437.
19. The Taxpayer asserted that the Subject Property's actual value was calculated without sufficient consideration of the economic crisis. The Taxpayer also asserted that the actual value of the Subject Property for tax year 2011 should equal the 2010 assessment, which according to the Assessment Report amounted to \$232,200.
20. In support of these assertions, the Taxpayer submitted CBSHome Real Estate documents regarding the sale of an area property in the amount of \$253,000.
21. The Taxpayer's approach can best be deemed an attempt to value the Subject Property using the sales comparison approach. The Taxpayer did not, however, submit a fee appraisal of the Subject Property at the hearing before the Commission.<sup>10</sup> The Taxpayer also did not submit a Property Record Card for the \$253,000 parcel sale.
22. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences."<sup>11</sup>
23. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.<sup>12</sup> Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that "[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value."<sup>13</sup>
24. The Taxpayer did not provide analysis regarding adjustments based on the elements of comparison referenced above to determine whether the \$253,000 sale was truly comparable.

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<sup>9</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

<sup>10</sup> Fee appraisals of older residential properties such as the Subject Property often use the sales comparison approach exclusively, while newer properties sometimes also include the cost approach.

<sup>11</sup> *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008 at 301-02.

<sup>12</sup> *Id.* at 141.

<sup>13</sup> Neb. Rev. Stat. §77-1371 (Reissue 2009).

25. The Commission notes that guidance for purposes of applying the sales comparison approach is widely available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.
26. The Commission also notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

**NOTE:** *Copies of the County's Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

27. General guidance regarding consideration of the economic crisis by the County in the residential mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.<sup>14</sup> For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.<sup>15</sup> Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**<sup>16</sup>

28. The Illinois Court of Appeal stated as follows regarding consideration of "current market conditions" in a 2012 opinion affirming a lower court's approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

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<sup>14</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>15</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

<sup>16</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

Our courts today face a similar situation as that faced by the court in [1937] Levy during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.<sup>17</sup>

29. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.<sup>18</sup>
30. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. Nonetheless, the Commission finds that the Taxpayer did not provide sufficient clear and convincing evidence, such as a sales comparison valuation or otherwise, to quantify the impact of the economic crisis on the value of the Subject Property.

### GENERAL EQUALIZATION LAW

31. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> 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.<sup>21</sup>
32. 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.<sup>22</sup>
33. 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.<sup>23</sup> Taxpayers are entitled to have their property assessed uniformly and

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<sup>17</sup> *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

<sup>18</sup> *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

<sup>19</sup> *Neb. Const.*, Art. VIII, §1.

<sup>20</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>21</sup> *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).

<sup>22</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>23</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

proportionately, even though the result may be that it is assessed at less than the actual value.<sup>24</sup>

34. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>25</sup> 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].”<sup>26</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>27</sup>
35. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>28</sup>

### EQUALIZATION ANALYSIS

36. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of nearby properties. In support of this assertion, the Taxpayer submitted “Account Information” screen-shots from the Douglas County Assessor’s website for several area properties near the Subject Property.
37. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>29</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>30</sup>
38. The Commission finds that the parcels submitted by the Taxpayer are not similarly situated or comparable for equalization analysis purposes due to significant size and style differences (the Subject Property is improved with a 3,242 square foot tri-level residence, while the alleged comparables are all two-story homes in the range of 2,568 to 2,792 square feet). The Commission also finds that the Taxpayer did not provide sufficient evidence of the ratio of assessed value to market value with respect to the Subject Property or the alleged comparables to obtain equalization relief.<sup>31</sup>

### CONCLUSION

39. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

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<sup>24</sup> *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).

<sup>25</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>26</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>27</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>28</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>29</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>30</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>31</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

40. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**ORDER**

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2011 is Affirmed.
2. That the taxable value of the Subject Property for tax year 2011 is:

Land	\$ 28,000
Improvements	\$252,600
Total	\$280,600

3. This decision and order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2011.
7. This order is effective on December 17, 2013.

Signed and Sealed: December 17, 2013.

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Thomas D. Freimuth, Commissioner