

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

Daniel F. Cross,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 832

Decision Reversing  
County Board of Equalization

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property is a residential parcel located at 20770 Palm Circle, Elkhorn, Douglas County, Nebraska. The Subject Property’s legal description is: Arbor Ridge Lot 12 Block 0 Irreg. .
2. The Douglas County Assessor assessed the Subject Property at \$210,500 for tax year 2012.
3. Daniel F. Cross (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$210,500 for tax year 2012.
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 Lincoln State Office Bldg., Lincoln, Nebraska, before Commissioner Thomas D. Freimuth, on March 26, 2014.
7. Daniel F. Cross, the Taxpayer, was present at the hearing.
8. Larry Thomsen, an assessor with the Douglas County Assessor’s Office, was present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record File contained in the Assessment Report submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$200,500 in August 2001. It also indicates that the 2,248 square foot residence situated on the Subject Property was constructed in 1995 and had an effective age of 17 years for 2012 tax year purposes.
10. Following is the Subject Property’s assessment history contained in the County’s Assessment Report at page 13:

<b>YEAR EFFECTIVE</b>	<b>DATE OF CHANGE</b>	<b>LAND VALUE</b>	<b>IMPROVE VALUE</b>	<b>TOTAL VALUE</b>	<b>REASON</b>
2012	8/7/2012	\$23,000	\$187,500	\$210,500	Board of Equalization
2012	3/9/2012	\$23,000	\$187,500	\$210,500	Reappraisal
2008	3/10/2008	\$23,000	\$184,400	\$207,400	Reappraisal
2005	3/19/2005	\$23,000	\$166,300	\$189,300	Reappraisal
2003	3/14/2003	\$23,000	\$162,700	\$185,700	Land Review
2000	3/12/2000	\$16,300	\$124,400	\$140,700	Land Review
1999	5/21/1999	\$12,800	\$124,400	\$137,200	State BOE
1999	3/9/1999	\$12,200	\$118,500	\$130,700	Land Review
1998	3/4/1998	\$8,100	\$118,500	\$126,600	Land Review
1996	3/16/1996	\$4,100	\$118,500	\$122,600	Building Permit

11. The Assessment Report indicates that the County Assessor's \$210,500 notice value for tax year 2012, which was adopted by the County Board as noted in the chart above, attributes \$23,000 to land and \$187,500 to the Subject Property's improvement component. The Assessment Report also indicates that the County Assessor's 2012 valuation of the Subject Property's improvement component is based on a cost approach.
12. The County Board's determinations for tax years 2008 through 2011 equaled the County Assessor's \$207,400 reappraisal of the Subject Property in March of 2008, several months prior to time in September of 2008 when the general public became aware of the economic crisis due to the failure of Lehman Brothers, a large financial institution. This March 2008 reappraisal in the amount of \$207,400, which was adopted by the County Board in August of 2008, reflects an approximate 10% increase in comparison to the County Assessor's \$189,300 reappraisal in 2005 that the County Board adopted for tax years 2005 - 2007.
13. The Taxpayer asserted that the County overvalued the Subject Property for tax year 2012 because a similar home across the street from his parcel located at 3919 North 208<sup>th</sup> St. sold for \$190,000 in May 2012 after being on the market for over a year (this 3919 North 208<sup>th</sup> St. parcel was assessed at \$207,800 for tax year 2012 and the \$190,000 sale was deemed valid, according to a screenshot excerpt from the Douglas County Assessor's website submitted by the Taxpayer). As a result, the Taxpayer asserted that the Subject Property should be valued at \$190,000 for tax year 2012.
14. The Taxpayer also asserted that the assessed value of the Subject Property for tax year 2012 should be lowered because nine Palm Circle properties where his parcel is located received an average decrease in assessed value from 2011 to 2012 in the amount of \$6,755. The home located at 3919 North 208<sup>th</sup> St. noted above and the Subject Property were the only Palm Circle homes that did not receive a decreased assessment from 2011 to 2012.
15. In support of his assertions, the Taxpayer referenced the 2008 economic crisis and its difficult aftermath from a real estate value standpoint. He also submitted excerpts of screenshots from the Douglas County Assessor's website indicating the sale and assessment history of the nine Palm Circle properties that received decreased assessments from 2011 to 2012, together with a map indicating the locations of the properties.

16. The Assessment Report at page 8 states that the most recent County inspection occurred on February 5, 2013. The County Assessor lowered the condition of the Subject Property from Good to Average as a result of this inspection. After this change, the Commission notes that the County Assessor classified both the Subject Property and the property located at 3919 N. 208 street that sold for \$190,000 in May 2012 as Good in terms of quality and Average in terms of condition.
17. The County Board provided the Commission with its Assessment Report that contains the Property Record Files for the Subject Property and three alleged comparable properties.

### STANDARD OF REVIEW

18. 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>
19. 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 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>
20. 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>
21. 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

22. 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>
23. "Actual value, market value, and fair market value mean exactly the same thing."<sup>8</sup>

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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).

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

24. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.<sup>9</sup>
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>10</sup>
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>11</sup>
27. 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>12</sup>

### VALUATION ANALYSIS

28. The Taxpayer expressed concern regarding insufficient consideration of the economic crisis by the County. General guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.<sup>13</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>14</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>15</sup>

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<sup>9</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>10</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>11</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>13</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

<sup>14</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

<sup>15</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

29. The New Jersey Tax Court stated as follows regarding consideration of “current market conditions” in a 2013 opinion that reduced the assessed value of the Borgata casino from \$2.26 billion to \$880 million in tax year 2009 and to \$870 million in tax year 2010 due to the adverse impact of the national economic crisis and increased gaming competition (the \$2.26 billion assessment stemmed from a reappraisal for tax year 2008):

The national economy began to soften in late 2007, primarily due to the subprime housing crisis. By October 1, 2008, the economy suffered a significant downturn triggered by the collapse of the mortgage markets and the failure of Bear Stearns and Lehman Brothers. The government-sanctioned bailout of Bear Stearns as a banking institution “too big to fail” set off alarms concerning the stability of the American banking system. The mid-September 2008 collapse of Lehman Brothers led to a sharp drop-off in the stock market and the beginning of the worst recession since the Great Depression. . . .

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October 1, 2009, the macro economy had entered into what many commentators termed a ‘New Normal,’ meaning that the developed nations would enter into a prolonged period of low growth, high unemployment and a need for de-leveraging. This would add to the uncertainty surrounding the gaming industry in general and in Atlantic City specifically, as of the valuation date.” Unemployment rates started to increase significantly in 2008 and were still rising as of September 2009. This fact is significant because low unemployment rates are indicative of increased consumer spending on such discretionary items as gaming and entertainment. The perception that the nation’s economic trouble was not a transitory downturn, but a long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.<sup>16</sup>

30. 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:

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

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<sup>16</sup> *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at pgs. 1- 2, 8 - 9 (New Jersey Tax Court 2013).

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>

31. 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>
32. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. Ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result
33. Based on the County’s Assessment Report that indicates the Subject Property’s condition was lowered from Good to Average as a result of a February 2013 inspection, together with all of the other documents and statements submitted at the hearing, the Commission finds sufficient evidence that the County Board’s determination for tax year 2012 was arbitrary or unreasonable.<sup>19</sup>
34. In the case where it is determined that the County Board’s determination was unreasonable or arbitrary, the Commission must review the evidence and adopt the most reasonable estimate of actual value presented.<sup>20</sup> With respect to the best evidence of value as of the assessment date on January 1, 2012, there is no evidence that the Subject Property’s condition rating adjustment from Good to Average in February 2013 stemmed from damage or other adverse events. I also note that the reliability of the County’s cost approach used for 2012 tax purposes is limited in the case of older residential properties such as the Subject Property, especially with respect to calculating depreciation in the aftermath of the economic crisis.<sup>21</sup>
35. I note that the County Board placed a valuation of \$189,300 on the parcel from 2005 – 2007 in reliance on a reappraisal by the County Assessor in 2005 (see assessment history chart above). Based on this assessment history and consideration of the 2008 economic crisis and its aftermath, the Taxpayer’s \$190,000 opinion of value that is supported by the \$190,000 sale of a similar nearby home in May 2012 appears reasonable.
36. The Commission finds that the best evidence of value in this case is the County’s \$189,300 reappraisal value in 2005.

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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> Assessed value, as determined by the County Board for tax year 2012, 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 2012 protest proceeding.

<sup>20</sup> See, *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002); *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

<sup>21</sup> *Appraising Residential Properties*, 4<sup>th</sup> Edition, Appraisal Institute, 2007, at p. 260.

## GENERAL EQUALIZATION LAW

37. “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>22</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>23</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>24</sup>
38. 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>25</sup>
39. 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>26</sup> 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.<sup>27</sup>
40. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>28</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>29</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>30</sup>
41. “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>31</sup>

## EQUALIZATION ANALYSIS

42. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>32</sup> or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.<sup>33</sup>

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<sup>22</sup> *Neb. Const.*, Art. VIII, §1.

<sup>23</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>24</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>25</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>26</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>27</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>28</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>29</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>30</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>31</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>32</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>33</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

43. The Commission 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.*

44. In substantial part because Property Record Files were not submitted by the Taxpayer for the parcels submitted for consideration, the Commission is unable to perform an equalization analysis. Thus, the Commission finds that the Taxpayer's assertion that the Subject Property was not equalized with other real property is not supported by sufficient evidence.

### CONCLUSION

45. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

46. The Taxpayer has 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 vacated and reversed.

### 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 2012 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 23,000
Improvements	\$166,300
Total	\$189,300

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 2012.
7. This order is effective on August 29, 2014.

Signed and Sealed: August 29, 2014.

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Thomas D. Freimuth, Commissioner