

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

Lily G. & Robert L. Hans Revocable Trust,  
Robert L. Hans, Trustee,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case Nos: 12R 136 & 13R 072

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

**For the Appellant:**

Robert L. Hans, Trustee,  
Lily G. & Robert L. Hans Revocable Trust.

**For the Appellee:**

John M. Watson,  
Deputy Lancaster County Attorney.

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Lincoln, Lancaster County, Nebraska. The parcel is improved with a 1,379 square foot one-story townhome. Both the legal description of the parcel and the property record card for the Subject Property are found at Exhibit 9.

**II. PROCEDURAL HISTORY**

The Lancaster County Assessor determined that the assessed value of the Subject Property was \$172,100 for tax year 2012.<sup>1</sup> Lily G. & Robert L. Hans Revocable Trust (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board) and requested an assessed valuation of \$153,648.<sup>2</sup> The County Board determined that the taxable value for tax year 2012 was \$172,100.<sup>3</sup>

The Lancaster County Assessor determined that the assessed value of the Subject Property was \$172,100 for tax year 2013.<sup>4</sup> The Taxpayer protested this assessment to the County Board

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<sup>1</sup> See, E1.

<sup>2</sup> See, E3:8

<sup>3</sup> See, E1.

<sup>4</sup> See, E2:1.

and requested an assessed valuation of \$153,648.<sup>5</sup> The County Board determined that the taxable value for tax year 2013 was \$172,100.<sup>6</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (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 30, 2013.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>7</sup> 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."<sup>8</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>9</sup>

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>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

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<sup>5</sup> See, E2:2.

<sup>6</sup> See, E2:1.

<sup>7</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). "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).

<sup>8</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

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>12</sup> 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 unreasonable or arbitrary.<sup>13</sup>

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.”<sup>14</sup> 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.”<sup>15</sup>

#### IV. EQUALIZATION

##### A. 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 Constitution.”<sup>16</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>17</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>18</sup> 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>19</sup> 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>20</sup> Taxpayers are

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<sup>12</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>13</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>16</sup> *Neb. Const.*, Art. VIII, §1.

<sup>17</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>18</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>19</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>20</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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>21</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>22</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>23</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>24</sup> “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>25</sup>

## **B. Summary of the Evidence**

Robert Hans testified that the Subject Property was not equalized with other similarly situated properties. Hans alleged that a property located at 7300 Old Post Road #7 was comparable to the Subject Property. The Subject Property was purchased in 1995 for \$140,000.<sup>26</sup> The alleged comparable property was purchased in 1996 for \$167,000.<sup>27</sup>

Hans asserted that the Subject Property and alleged comparable property were similar because: (1) both are interior townhomes;<sup>28</sup> and (2) both share the same view of the same hole on the same golf course.<sup>29</sup> The property record cards indicate that both properties were assigned the same condition and quality ratings for purposes of assessment.<sup>30</sup> Hans testified that the property record cards for both the Subject Property and the alleged comparable property correctly

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<sup>21</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>22</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>23</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>24</sup> *Id.* at 673, 94 N.W.2d at 50.

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

<sup>26</sup> E9:1.

<sup>27</sup> E10:1. Hans alleged this sale was relevant even though the sale occurred more than sixteen years before the effective dates in these appeals, and also despite the fact that the property record card indicated that the 1996 sale was a disqualified sale. Hans offered no evidence of the relevance of the sale other than his assertions.

<sup>28</sup> See, E7 (aerial photo of the Subject Property and alleged comparable property).

<sup>29</sup> *Id.*

<sup>30</sup> See, E9:3 (indicating the Subject Property is average for both condition and quality); See also, E10:3 (indicating that the alleged comparable property is average for both condition and quality).

described the characteristics of the properties.<sup>31</sup> He testified that he had been inside the alleged comparable property and had personal knowledge of its main level. The Taxpayer offered no other evidence of the actual value of either the Subject Property or the alleged comparable property.

Patrick Dougherty, a licensed appraiser in Nebraska and the Senior Residential Property Appraiser for Lancaster County, testified for the County Board.<sup>32</sup> Dougherty testified that both the Subject Property and the alleged comparable property were valued using a mass appraisal model sales comparison approach.<sup>33</sup> Dougherty asserted that the mass appraisal model indicated that the Taxpayer's alleged comparable property was not substantially similar to the Subject Property without significant adjustments. Dougherty asserted that the Subject Property was superior to the alleged comparable property in many respects including: (1) larger gross living area;<sup>34</sup> (2) more plumbing fixtures;<sup>35</sup> (3) larger garage area;<sup>36</sup> (4) larger area of basement finish;<sup>37</sup> (5) a covered deck;<sup>38</sup> (6) a poured concrete slab;<sup>39</sup> and (7) an enclosed porch.<sup>40</sup> The Commission

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<sup>31</sup> See, E9:2 (indicating the characteristics of the Subject Property); See also, E10:2 (indicating the characteristics for the alleged comparable property).

<sup>32</sup> See, E24.

<sup>33</sup> The Commission notes that E3:9 identifies the comparable properties used when valuing the Subject Property in tax year 2012. Additionally, E19 indicates the same comparable properties were used to value the Subject Property in tax year 2013. The Commission further notes that the same comparable properties were used in tax years 2012 and 2013 to determine the assessed value of the Taxpayer's alleged comparable property.

<sup>34</sup> The Subject Property has 1,379 square feet of gross living area. E9:3 and E14:3. The alleged comparable property has 1,314 square feet of gross living area. E10:3 and E15:3. Dougherty testified that the gross living area should be valued at \$48 per square foot. E9, E10, E14, E15. An adjustment of \$3,120 ( $1,379 - 1,314 = 65 \times \$48 = \$3,120$ ) is necessary to account for the difference in gross living area.

<sup>35</sup> The Subject Property has 12 plumbing fixtures. E9:3 and E14:3. The alleged comparable property has 8 plumbing fixtures. E10:3 and E15:3. Dougherty testified that each plumbing fixture adds \$1,500 in actual value. E9, E10, E14, E15. An adjustment of \$6,000 ( $12 - 8 = 4 \times \$1,500 = \$6,000$ ) would be necessary to account for the difference in the number of plumbing fixtures.

<sup>36</sup> The Subject Property has 621 square feet of garage area. E9:3 and E14:3. The alleged comparable property has 575 square feet of garage area. E10:3 and E15:3. According to the testimony of Dougherty, each square foot of garage area adds \$25 in actual value. E9, E10, E14, E15. An adjustment of \$1,150 ( $621 - 575 = 46 \times \$25 = \$1,150$ ) would be necessary to account for the difference in garage area.

<sup>37</sup> The Subject Property has 1,050 square feet of basement finish. E9:3 and E14:3. The alleged comparable property has 650 square feet of basement finish. E10:3 and E15:3. Dougherty testified that each square foot of basement finish area adds \$16 in actual value. E9, E10, E14, E15. An adjustment of \$6,400 ( $1,050 - 650 = 400 \times \$16 = \$6,400$ ) would be necessary to account for the difference in basement finish area.

<sup>38</sup> The property record cards for the Subject Property indicate that the Subject Property had a 136 square foot covered deck. E9:3 and E14:3. Dougherty testified that each square foot of covered deck added \$15 in actual value. An adjustment of \$2,040 to the actual value of the alleged comparable property would need to be made since the property record cards for the alleged comparable property indicate that it does not possess this feature. E10:3 and E15:3.

<sup>39</sup> The property record cards for the Subject Property indicate that the Subject Property had a poured concrete slab associated with the covered deck. E9:3 and E14:3. Dougherty testified the concrete slab would add \$2,040 to the actual value of the Subject Property. An adjustment of \$2,040 to the actual value of the alleged comparable property would need to be made since the property record cards for the alleged comparable property indicate that it does not possess this feature. E10:3 and E15:3.

<sup>40</sup> The property record cards for the Subject Property indicate that the Subject Property had a 56 square foot enclosed porch. E9:3 and E14:3. Dougherty testified that each square foot of enclosed porch would add \$25 to the actual value of the Subject Property.

determines that without adjustments to account for these differences, the Subject Property and the Taxpayer's alleged comparable property are not substantially similar.

The Commission finds that a review of the property record cards indicates that an upward adjustment of \$22,150 to the alleged comparable property would be necessary to account for these differences.<sup>41</sup> The Commission notes that the adjustment would result in an adjusted value of \$168,550 for the alleged comparable property.<sup>42</sup> The Commission finds that the County Board's determination of the actual value of the Subject Property is not grossly excessive when compared with the adjusted value of the alleged comparable property.

The Commission finds that the sale price of the Subject Property in 1995 would require time adjustments to be relevant to the taxable value of the Subject Property in tax years 2012 and 2013. The Commission further finds that the sale of the Taxpayer's alleged comparable in 1996 was not qualified for purposes of the sales roster.<sup>43</sup> The Taxpayer's unsupported assertions that the 1996 sale should have been a qualified sale are insufficient evidence for the Commission to determine whether the sale was appropriately disqualified. The Commission, therefore, gives the sale price of the alleged comparable property no weight. The Commission further finds that even if the sale of the alleged comparable property in 1996 was the result of an arm's length transaction, the sale would be irrelevant without adjustments for differences in characteristics and time.

## V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. Further, the Commission finds, there is not clear and convincing evidence that valuation placed on Subject Property was grossly

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An adjustment of \$1,400 ( $56 \times \$25 = \$1,400$ ) would be necessary since the property record cards for the alleged comparable property indicate that the alleged comparable property does not possess this feature. E10:3 and E15:3.

<sup>41</sup> The following calculation was utilized to derive this adjustment: \$3,120 gross living area adjustment + \$6,000 plumbing fixture adjustment + \$1,150 garage area adjustment + \$6,400 basement finish adjustment + \$2,040 adjustment for covered deck + \$2,040 adjustment for concrete slab + \$1,400 adjustment for enclosed porch = \$22,150 total adjustment.

<sup>42</sup> ( $\$146,400 + \$22,150 = \$168,550$ ).

<sup>43</sup> See, E10 and E15.

excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.

For all of the reasons set forth above, the determinations by the County Board are affirmed.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2012 and 2013 are affirmed.
2. The assessed value of the Subject Property for tax years 2012 and 2013 is \$172,100.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 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 2012 and 2013.
7. This Decision and Order is effective for purposes of appeal on January 8, 2014.

Signed and Sealed: January 8, 2014

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.