

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

John L. Bohrer,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 118

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

**GENERAL BACKGROUND AND PROCEDURAL HISTORY**

1. The real property subject to appeal (herein referred to as the “Subject Property”) is a residential parcel located at 113 Ginger Cove Road, Valley, NE, with a legal description of: GINGER COVE ADD LOT 113 BLOCK 0 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$348,100 for tax year 2012.
3. John L. Bohrer (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 \$348,100 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 on August 27, 2013, at the Omaha State Office Bldg., 1313 Farnam, Rm. 227, Omaha, NE, before Commissioner Thomas D. Freimuth.
7. John L. Bohrer was present at the hearing.
8. Larry Thomsen, an assessor with 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

<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>
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 8</sup>

### SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The assessed value of the Subject Property increased from \$300,300 in tax year 2011 to \$348,100 in tax year 2012.<sup>9</sup> The Taxpayer generally asserted that this increase was arbitrary, and that the assessed values of superior properties located in his neighborhood decreased while his increased.<sup>10</sup>
15. The Taxpayer did not provide any property record cards for the alleged comparable properties. The Taxpayer asserted that the Subject Property is inferior to most of the lots in the development, and that the Subject Property has less lake frontage than most lots.<sup>11</sup>
16. The Taxpayer asserted that the Subject Property, which was built in 1971,<sup>12</sup> was not significantly improved between January 1, 2011 and January 1, 2012.<sup>13</sup> The Taxpayer also asserted that the Subject Property’s kitchen and bathrooms needed updating and improvements.<sup>14</sup>

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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) (2012 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> 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>9</sup> See, Assessment Report, pg. 11.

<sup>10</sup> See, Taxpayer letter dated June 27, 2012.

<sup>11</sup> See, Lot Map; See also, Hearing Notes.

<sup>12</sup> See, Assessment Report, pg. 9.

<sup>13</sup> See, Hearing Notes; See also, Assessment Report, Referee clhref09 comments.

<sup>14</sup> See, Hearing Notes.

17. The County Assessor provided an Assessment Report for the Subject Property. The Assessment Report includes a list of alleged comparable properties for equalization purposes.<sup>15</sup>
18. The property record cards for the County's alleged comparable properties are also located in the Assessment Report.<sup>16</sup> The Assessment Report indicates that the Subject Property and the alleged comparable properties were valued using the sales comparison approach.<sup>17</sup>
19. The Market Calculation Details of the County Assessor's alleged comparable properties are found in their respective property record cards.<sup>18</sup> The Subject Property was inspected as part of a reappraisal of the neighborhood in December 2012.<sup>19</sup> The Assessment Report indicates that the Taxpayer refused inspection of the Subject Property for purposes of the Commission's hearing.<sup>20</sup>
20. The County Assessor asserted that the Subject Property was valued using market data, and that a comparable property located at Lot 115 on the Taxpayer's lot map was listed for \$550,000 in 2008.<sup>21</sup>
21. The Subject Property received a deduction in actual value based on its age and design.<sup>22</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>23</sup>
23. "Actual value, market value, and fair market value mean exactly the same thing."<sup>24</sup>
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>25</sup>
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>26</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>27</sup>
27. Nebraska Statutes section 77-112 defines actual value as follows:

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<sup>15</sup> See, Assessment Report, pg. 9.

<sup>16</sup> See, *Id.* at 12-30.

<sup>17</sup> See, *Id.* at 6 & 10.

<sup>18</sup> See, *Id.* at 16, 22, and 29.

<sup>19</sup> See, *Id.* at 7.

<sup>20</sup> See, *Id.* at 7.

<sup>21</sup> See, Lot Map.

<sup>22</sup> See, Assessment Report, pg. 10 (market calculation detail of the Subject Property); See also, Hearing Notes.

<sup>23</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>24</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>25</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>26</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>27</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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>28</sup>

### VALUATION ANALYSIS

28. The Assessment Report indicates that the Subject Property was valued using a mass appraisal sales comparison method and a CAMA system.<sup>29</sup> This method is a statutorily approved method for valuing real property in Nebraska.<sup>30</sup>
29. All evidence at the hearing indicated that the County Assessor's approach was based on market data.
30. While the Taxpayer alleged that the Subject Property suffered from some physical depreciation, the Subject Property was given a deduction for age and style.<sup>31</sup> The Taxpayer did not offer evidence indicating that this quantification of the effect of the age of the Subject Property failed to adequately account for necessary updates and repairs.

### 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>32</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>33</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>34</sup>

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<sup>28</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>29</sup> See, Assessment Report, pgs. 6 and 10.

<sup>30</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>31</sup> See, *Id.* at 10.

<sup>32</sup> *Neb. Const.*, Art. VIII, §1.

<sup>33</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>34</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).

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>35</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>36</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>37</sup>
34. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>38</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>39</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>40</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>41</sup>

### EQUALIZATION ANALYSIS

36. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>42</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>43</sup>
37. A comparison of alleged comparable properties to determine if the Subject Property’s assessed valuation is grossly excessive requires sufficient documentation to ascertain whether the Subject Property and alleged comparable properties are truly comparable but valued at materially different levels, or whether differences in assessed values are directly attributable to differences between the Subject Property and the alleged comparable properties. The Taxpayer did not provide Property Record Files for any of his alleged comparable properties.

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<sup>35</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>36</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>37</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>38</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>39</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>40</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>41</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>42</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>43</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

38. 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.*

39. The Commission is unable to properly evaluate similarity because Property Record Profiles were not submitted for the four properties offered by the Taxpayer for consideration.
40. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was less than 100% for tax year 2012. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.
41. The County Assessor did provide Property Record Files for its alleged comparable properties.<sup>44</sup> While these alleged comparable properties are not identical to the Subject Property, the Assessment Report indicates that the Subject Property and alleged comparable properties were valued using the County's CAMA system, which performs a mass appraisal sales comparison approach.<sup>45</sup>
42. A review of the market calculation details provided in the Property Record Files for the Subject Property and the alleged comparable properties indicates that similar physical elements located on the parcels were valued at the same material level, and that differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.<sup>46</sup>

### CONCLUSION

43. The Taxpayer has not produced clear and convincing evidence that the assessed value of the Subject Property is grossly excessive.
44. 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>44</sup> See, *Id.* at 12-30.

<sup>45</sup> See, *Id.* at 10, 16, 22, and 29.

<sup>46</sup> See, *Id.*

45. 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 2012 is Affirmed.
2. The taxable value of the Subject Property for tax year 2012 is \$348,100.
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 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 year 2012.
7. This Decision and Order is effective on July 3, 2014.

Signed and Sealed: July 3, 2014.

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Thomas D. Freimuth, Commissioner