

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

Katherine C. Lempka,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13R 565

Decision and Order Reversing  
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 24308 Mason Street, Waterloo, Nebraska, with a legal description of: WEST SHORES LOT 52 BLOCK 0 IRREG.
2. The Douglas County Assessor (herein referred to as the “County Assessor”) assessed the Subject Property at \$746,800 for tax year 2013.
3. Katherine C. Lempka (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 Douglas County Board determined that the taxable value of the Subject Property was \$746,800 for tax year 2013.
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 June 3, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Katherine C. Lempka was present at the hearing.
8. G. Kevin Corcoran and Mary Cederberg, employees of the County Assessor’s Office, were present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Taxpayer asserted that the Subject Property was overvalued for tax year 2013, and that comparable properties received functional depreciation while the Subject Property did not.
10. The Taxpayer further asserted that the Subject Property was assessed for a pool which added no value to the Subject Property, and that comparable properties with pools were not assessed for this characteristic for tax year 2013.
11. The Taxpayer provided the Commission with a list of comparable properties, together with Property Record Files (“PRFs”).
12. The information presented indicates that 1.5 story residences received a minimum 6% functional obsolescence adjustment for tax year 2013.

13. The Subject Property's PRF indicates that the Subject Property is a 1.5 story residence, but that it did not receive an adjustment for functional depreciation for tax year 2013.

### STANDARD OF REVIEW

14. 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>
15. 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>
16. 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>
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
18. 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>

### GENERAL VALUATION LAW

19. 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>8</sup>
20. "Actual value, market value, and fair market value mean exactly the same thing."<sup>9</sup>
21. 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>10</sup>
22. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>11</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) (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> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>10</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

23. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>12</sup>
24. 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>13</sup>

#### **VALUATION/EQUALIZATION ANALYSIS**

25. The unrefuted evidence indicates that comparable 1.5 story improvements received at least 6% functional depreciation for tax year 2013 and the Subject Property did not. The Subject Property's improvement component should have received a 6% functional depreciation adjustment due to its 1.5 story design.
26. The Commission was unable to replicate the County Assessor's replacement cost new less depreciation calculation, which is set forth in the County Board's Assessment Report.<sup>14</sup>
27. The Subject Property's PRF and the statements/documents submitted at the hearing include limited information regarding the County's assessment of the pool characteristic. Additionally, the PRF for each respective parcel submitted for consideration by the Taxpayer does not contain sufficient, if any, information concerning a pool characteristic. Thus, the Commission is unable to sufficiently analyze the Taxpayer's assertion regarding the contribution to value of the Subject Property's pool, if any, and the Commission is also unable to determine whether the Subject Property was assessed in violation of equalization principles for tax year 2013.
28. The Commission finds that for the foregoing reasons the County Board's determination that relied upon the County Assessor's opinion of value is arbitrary and unreasonable for tax year 2013.
29. The Commission finds that the actual value of the Subject Property for tax year 2013 should be \$677,000.<sup>15</sup>

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<sup>11</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>12</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>14</sup> The Commission's attempt to replicate the County Assessor's replacement cost new less depreciation calculation accounts for items contained in the Subject Property's Property Record File, but which are not found listed on the documentation entitled "Cost Detail of Building" that is found in the County Board's Assessment Report submitted at the hearing. A recalculation of the Cost Detail with all add-ons and items found in the Property Record File indicated a replacement cost new significantly less than the assessed value of the Subject Property.

**CONCLUSION**

- 30. 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.
- 31. 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.

**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 2013 is Vacated and Reversed.
- 2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$140,000
<u>Improvements</u>	<u>\$537,000</u>
Total	\$677,000

- 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 (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 year 2013.
- 7. This Decision and Order is effective on July 10, 2015.

Signed and Sealed: July 10, 2015.

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Thomas D. Freimuth, Commissioner

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<sup>15</sup> (\$288,603 (Building SF) + \$5,748 (Walkout) + \$1,437 (Outside Entrance) + \$77,025 (Finished) + \$5,134 (Slab Roof Ceiling) + \$72,980 (Basement Conc 9 ft.) + \$14,434 (Cvrd Wood Deck) + \$24,924 (Built In) + \$2,960 (Open Slab) + \$8,208 (Nat Stone/Moss Rock) + \$19,700 (Swimming Pool In Ground) + \$1(Sprinkler System)) x .97 (physical depreciation) x .94 (functional depreciation) x 1.13 (neighborhood adjustment) = \$537,000 (replacement cost new less depreciation, rounded) + \$140,000 (land) = \$677,000 (actual value).