

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

David W. Dibben,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 10R 124, 11R 278,  
12R 756, & 13R 321

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

**For the Appellant:**

David W. Dibben,  
Pro Se

**For the Appellee:**

Malina M. Dobson,  
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located at 3121 N. 59<sup>th</sup> St., Omaha, Douglas County, Nebraska. The parcel is improved with a 996 square foot single family rental house. The legal description of the parcel is found at Exhibit 5, page 3. The property record files for the Subject Property are found at Exhibits 5-8.<sup>1</sup>

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the subject property was \$57,100 for each of the tax years 2010-2013.<sup>2</sup> David W. Dibben (the Taxpayer) protested these assessments each year to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for each tax year 2010-2013 was \$57,100.<sup>3</sup>

The Taxpayer appealed each decision of the County Board to the Tax Equalization and Review Commission (Commission). The appeals in 10R 124 and 11R 278 were designated for a

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<sup>1</sup> The property record files for tax years 2010-2013 are found in Exhibits 5-8 respectively.

<sup>2</sup> Exhibits 1-4.

<sup>3</sup> Exhibits 1-4.

consolidated single commissioner hearing, and a single commissioner hearing was held on November 11, 2011. An order of reversal was issued by a single commissioner on October 23, 2013. The County Board filed a timely request for a rehearing on November 15, 2013. The Commission issued an Order for Rehearing and Notice of Rehearing vacating the October 23, 2013 single commissioner order and setting the appeal for a de novo informal hearing on the merits before the Commission. The order also consolidated the appeals for tax years 2010 and 2011 with the subsequent appeals for tax years 2012 and 2013. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. At the hearing, the parties stipulated to the receipt of some of the exchanged exhibits. The Commission held a consolidated hearing on November 24, 2014.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>4</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>5</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>6</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

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<sup>4</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>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

arbitrary.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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>9</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>10</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>11</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>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

## IV. VALUATION

### A. Applicable Law

Under Nebraska law,

[a]ctual 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>14</sup>

“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

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<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</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>10</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”<sup>15</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

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

David W. Dibben testified on his own behalf. He testified that he had been investing in real estate in the Omaha, Nebraska market since 1995.<sup>20</sup> Dibben stated that he purchased the Subject Property from the Bank of New York on October 13, 2009, for \$24,100.<sup>21</sup> He explained that he had utilized a realtor at NP Dodge as his buyer’s agent and that the property had been listed on the open market for 89 days.<sup>22</sup> Dibben testified he did not know whether the transaction was a foreclosure sale.

Dibben stated that after purchasing the Subject Property he obtained an estimate to repair the slate roof in the amount of \$15,000. He asserted that the slate roof was inferior in value to an asphalt roof covering. Dibben also testified that the interior floor of the Subject Property was sloped due to settling of the foundation. He did not offer an opinion of or evidence regarding the cost to repair the foundation settling problems. Dibben also testified that vinyl siding was added to the Subject Property, including one additional front window, sometime during 2010. He stated that otherwise only routine maintenance had been done to the Subject Property during the relevant time period.

Dibben asserted that the sale price of the Subject Property of \$24,100 from 2009 was the best indicator of the actual value of the Subject Property for each of the four tax years at issue. The

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<sup>15</sup> *Id.*

<sup>16</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>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>18</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>20</sup> Dibben further testified that at the time of the hearing he was the owner of 12 single family residential parcels in the Omaha area and within two miles of the Subject Property.

<sup>21</sup> Exhibit 5:3. Exhibit 9:5.

<sup>22</sup> However, on the Real Estate Transfer Statement, Form 521, Question 15, asking, “[w]as transfer through a real estate agent?” was checked “No.”

Nebraska Supreme Court has held that, “a single sale may in some instances provide evidence of market value.”<sup>23</sup> Further, the Court reasoned, “[a] single sale should not be excluded merely because it is a single sale. Rather, the fact that evidence of other sales is not presented goes to the weight of the evidence.”<sup>24</sup> In this appeal, the mass appraisal model used to determine the value of the Subject Property analyzed many sales in the same neighborhood as the Subject Property. According to the evidence received, it is unknown whether the Assessor considered the 2009 sale of the Subject Property an arm’s length sale to be included in the model. The Commission finds that the single sale price of the Subject Property is not clear and convincing evidence that the determination of value by the County Board was arbitrary or unreasonable.

According to Assessment Report notes, the Subject Property was in foreclosure in 2009.<sup>25</sup> As noted above, the Taxpayer purchased the Subject Property October 13, 2009. By January, 2010, the Assessor noted that new vinyl siding had been installed, including at least one new window, and an addition to the front of the residence had been constructed.<sup>26</sup> The Assessor also noted the Taxpayer was doing work on the interior of the home.<sup>27</sup> The Assessor assigned a condition rating of fair for tax year 2010, with an estimate that once the interior work was completed the condition would need to be upgraded to average or good.<sup>28</sup>

On February 11, 2011, the Assessor conducted an interior and exterior inspection and recorded extensive notes regarding measurement and classification corrections, and noted a change in the condition rating of the Subject Property to average.<sup>29</sup>

On May 19, 2014, another interior and exterior inspection was done by the Assessor. The Assessor noted foundation shifting and settling, and several issues relating to the roof, including that the tile roof contained asbestos, that leaking had damaged ceilings and walls, and that the

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<sup>23</sup> *Firethorn Inv. v. Lancaster County Bd. of Equalization*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

<sup>24</sup> *Id.*

<sup>25</sup> Exhibit 5:9.

<sup>26</sup> Exhibit 5:9.

<sup>27</sup> Exhibit 5:9.

<sup>28</sup> Exhibit 5:9.

<sup>29</sup> Exhibit 5:9.

owner reported a cost estimate to remove and replace the roof at \$13,000.<sup>30</sup> Based upon the inspection, the Assessor changed the condition rating from average to fair.<sup>31</sup>

The evidence regarding the condition of the Subject Property for each of the tax years at issue is conflicting. The evidence supports the conclusion that the work the Taxpayer completed on the Subject Property was done before the end of 2010. Prior to doing the work, the Assessor rated the condition at fair. After completing the most current inspection in 2014, the Assessor again rated the condition at fair. No evidence supports the conclusion that the condition rating should have been increased to average for tax years 2011 and 2012 when the inspections for 2010 and 2014 resulted in Assessor opinions that the condition rating should be fair. The Commission therefore finds that for each tax year at issue the condition rating should have been fair for the Subject Property. When applying the condition rating of fair and making the appropriate corrections and changes to the Assessor's calculation of value as noted in the inspections of the Subject Property, the Commission finds that the actual value for each tax year was higher than the taxable value as determined by the County Board.

For tax year 2010, when corrections are made, and the condition is rated fair, the Commission finds that the taxable value should be \$62,200.<sup>32</sup> For tax year 2011, when corrections are made, and the condition rating is changed to fair,<sup>33</sup> the Commission finds that the taxable value should be \$62,200.<sup>34</sup> For tax year 2012, when corrections are made, and the condition is rated fair,<sup>35</sup> the Commission finds that the taxable value should be \$61,106.<sup>36</sup> For tax year 2013, when corrections are made, and the condition rating is changed to fair,<sup>37</sup> the Commission finds that the taxable value should be \$61,106.<sup>38</sup>

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<sup>30</sup> Exhibit 7:9.

<sup>31</sup> Exhibit 7:9.

<sup>32</sup> See Exhibit 5:9 (Assessor notes) and Exhibit 5:13 (Mass Appraisal Market Calculation Detail).

<sup>33</sup> For a condition rating of fair, the Commission finds that the actual value should be reduced by \$12,000. See Exhibit 5:9, where the fair condition rating resulted in a \$12,000 reduction for tax year 2010.

<sup>34</sup> \$74,200 - \$12,000. See Exhibits 5:9, 6:8 (Assessor notes) and Exhibit 6:12 (Mass Appraisal Market Calculation Detail).

<sup>35</sup> For a condition rating of fair, the Commission finds that the actual value should be reduced by \$12,000. See Exhibit 5:9, where the fair condition rating resulted in a \$12,000 reduction for tax year 2010.

<sup>36</sup> \$73,106 - \$12,000. See Exhibits 5:9, 6:8, 7:9, 7:14 (Assessor notes) and Exhibit 7:13 (Mass Appraisal Market Calculation Detail).

<sup>37</sup> For a condition rating of fair, the Commission finds that the actual value should be reduced by \$12,000. See Exhibit 5:12, where the fair condition rating resulted in a \$12,000 reduction for tax year 2010.

<sup>38</sup> See Exhibits 5:9, 6:8, 7:9, 7:14, 8:9, 8:14 (Assessor notes) and Exhibit 8:13 (Mass Appraisal Market Calculation Detail).

However, the Commission may not order an increase in taxable value from the highest taxable value for which notice was given to the Taxpayer in these appeals.<sup>39</sup> In these appeals, there is no evidence that the Taxpayer was given notice of any taxable value higher than \$57,100 for the Subject Property for any of the tax years at issue. The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at any amount higher than previously noticed to the Taxpayer by the Assessor, the County Board, or Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.<sup>40</sup> The Commission notes that the County Board did not assert during the hearing that the taxable value should be increased above that value previously noticed, and that no notice as would be required by the Commission's Rules and Regulations was ever perfected. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at any amount higher than previously noticed to the Taxpayer by the Assessor, County Board, or Property Tax Administrator in these appeals.

The Commission therefore finds that the taxable value of the Subject Property for each of the tax years at issue is \$57,100.

## V. EQUALIZATION

### A. Applicable 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>41</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>42</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>43</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to

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<sup>39</sup> 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

<sup>40</sup> 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

<sup>41</sup> *Neb. Const.*, Art. VIII, §1.

<sup>42</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>43</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).

market value for both the subject property and comparable property is required.<sup>44</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>45</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>46</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>47</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>48</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>49</sup>

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

David Dibben offered evidence relating to several sales of properties he alleged were comparable to the Subject Property. The sale dates ranged from February 27, 2008, to April 17, 2014.<sup>50</sup> However, Dibben did not offer, nor was there otherwise in evidence, the property record files for the parcels involved in these sales. Without the property record files for these parcels the Commission is unable to meaningfully compare the alleged comparable parcels with the Subject Property.

## **VI. 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.

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<sup>44</sup> *Cabela’s Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>45</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>46</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>47</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>48</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>49</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>50</sup> Portions of Exhibit 11 were received, and included Real Estate Transfer Statements for these sales.

For all of the reasons set forth above, the decisions of the County Board should be affirmed for each of the tax years at issue.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2010, 2011, 2012, and 2013 are affirmed.
2. Since notice was not given of a higher taxable value, the taxable value of the Subject Property for each tax year is \$57,100.
3. This Decision and Order, if no appeal is timely filed, 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 years 2010, 2011, 2012, and 2013.
7. This Decision and Order is effective for purposes of appeal on December 16, 2014.<sup>51</sup>

Signed and Sealed: December 16, 2014.

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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<sup>51</sup> 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.