

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

Brett M York,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 12R 887

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

### **GENERAL BACKGROUND AND PROCEDURAL HISTORY**

1. The Subject Property (herein referred to as the “Subject Property”) is a residential parcel located at 1508 N 182 Street, Elkhorn, Nebraska, with a legal description of:  
**RESIDENCES AT WEST DODGE STATION LOT 107 BLOCK 0 IRREG.**<sup>1</sup>
2. The Douglas County Assessor assessed the Subject Property at \$256,600 for tax year 2012.<sup>2</sup>
3. Brent M. York (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).<sup>3</sup>
4. The County Board determined that the assessed value of the Subject Property was \$256,600 for tax year 2012.<sup>4</sup>
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 April 3, 2014, 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. Brett M. York 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>5</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

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<sup>1</sup> See, Assessment Report, pgs. 2-3.

<sup>2</sup> See, Case File.

<sup>3</sup> See, Case File.

<sup>4</sup> See, Case File.

<sup>5</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).

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>6</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 sufficient competent evidence to justify its action.”<sup>7</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>8</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>9</sup>
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</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>11</sup>

## SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer provided the Commission with a Property Record File for a comparable property located at 1422 N 182 St (herein referred to as “Taxpayer’s comparable property”).
15. The Property Record File for the Taxpayer’s comparable property indicates that it was assessed using the cost approach and rated as Average quality. The Commission notes that the Taxpayer’s comparable property’s Building SF was valued at \$78.12.
16. The Taxpayer asserted that the Taxpayer’s comparable property was constructed by the same builder at about the same time as the Subject Property and was substantially similar in features, quality, and condition.
17. The Taxpayer asserted that under a theory of equalization the Subject Property and the Taxpayer’s comparable property should be valued at the same per square foot value.
18. The County Board provided the Commission with an Assessment Report which contains the Property Record Files for the Subject Property and three alleged comparable properties.<sup>12</sup>

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<sup>6</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>10</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>11</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).

19. The County Assessor valued the Subject Property using a cost approach.<sup>13</sup> The Subject Property was rated as Good for quality. The Commission notes that the Building SF of the Subject Property was valued at \$102.40 per square foot.<sup>14</sup>
20. Thomsen indicated that the Average quality designation for the Taxpayer's comparable property was incorrect, and that the Taxpayer's comparable property should have had a quality rating of Good for tax year 2012.
21. The County Board provided the Property Record Files for six comparable properties. The Commission notes that the Property Record Files indicate that all six comparable properties have similar features, locations, and amenities in comparison to the Subject Property and the Taxpayer's comparable property. All six comparable properties were also valued using the cost approach and were rated as Good in terms of quality.
22. The County Board asserted that it would violate the principles of equalization to value the Subject Property at less than actual value, because the County Assessor had correctly determined the quality for six comparable properties.

## **GENERAL EQUALIZATION LAW**

23. "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>15</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>16</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>17</sup>
24. 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>18</sup>
25. 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>19</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>20</sup>

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

<sup>13</sup> See, Assessment Report.

<sup>14</sup> See, Assessment Report.

<sup>15</sup> *Neb. Const.*, Art. VIII, §1.

<sup>16</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>17</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>18</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>19</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>20</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).

26. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>21</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>22</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>23</sup>
27. “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>24</sup>

## EQUALIZATION ANALYSIS

28. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>25</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>26</sup>
29. The uncontested evidence in this case is that the Subject Property and the Taxpayer’s comparable property are substantially similar properties valued at materially different levels for tax year 2012.
30. The principle of equalization states that no Taxpayer should be required to pay a disproportionate share of taxes.<sup>27</sup> Where a Taxpayer is assessed disproportionately than another Taxpayer, equalization requires that the assessed values are adjusted to become proportionate, even if the adjustment results in an assessed value for the Subject Property that is less than actual value.<sup>28</sup>
31. The evidence indicates that the Subject Property and the Taxpayer’s comparable property were valued using the cost approach, but at significantly different levels of value for the Building SF based on the quality rating assigned to the properties.<sup>29</sup>
32. The Square Foot Method of the cost approach assigns a value per square foot of gross living area. This value is dependent upon the quality of construction assigned to the

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

<sup>22</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>23</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>24</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

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

<sup>26</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>27</sup> See, *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>28</sup> See, *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>29</sup> See, Assessment Report; See also, Taxpayer’s comparable property’s Property Record File.

assessed property.<sup>30</sup> The Subject Property and the Taxpayer's comparable property were assigned different values per square foot of gross living area because the County Assessor incorrectly rated the Taxpayer's comparable property as Average quality rather than Good quality.

33. The Commission finds that the Subject Property's value per square foot of gross living area should be equalized with the Taxpayer's comparable property at \$78.12 per square foot.
34. The Commission finds that the improvement value of the Subject Property's for tax year 2012 should be \$182,879.<sup>31</sup>

## **CONCLUSION**

35. 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.
36. The Taxpayer has produced clear and convincing evidence that the Subject Property's assessed value when compared with similar properties is grossly excessive and is the result of systematic will or failure of a plain legal duty.
37. 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 2012 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$35,000
<u>Improvements</u>	<u>\$182,879</u>
Total	\$217,879

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<sup>30</sup> See, Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at 6 (12/2010)..

<sup>31</sup> The assessed value is calculated by substituting the Building SF value of \$78.12 from the Taxpayer's comparable property for the \$102.40 Building SF valued originally assigned to the Subject Property, and that completing the cost approach as contained in the Subject Property's Property Record File as follows: (\$144,366 (1,848 GLA x \$78.12 = \$144,366) + \$20,268 (garage) + \$2,560 (wood deck) + \$930 (open slab) + \$1,916 (walkout) + \$33,549 (Basement Concrete) + \$1,617 (slab roof ceiling) + \$3,401 (plumbing adjustment) - \$551 (rough in adjustment) + \$1,650 (Brick Veneer) + \$4,790 (allowance, see Assessment Report, page 11) - \$4,290 (\$214,496 x .02 (physical depreciation)) = \$4,290) x .87 (neighborhood adjustment) = \$182,879.

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 7, 2014.

Signed and Sealed: July 7, 2014

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Thomas D. Freimuth, Commissioner