

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

William I. Dreibelbis,  
Appellant,

Case No: 13R 847

v.

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

Douglas County Board of Equalization,  
Appellee.

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The Subject Property (Subject Property) is residential property located at 809 North 39<sup>th</sup> Street, Omaha, Douglas County, Nebraska, with a legal description of: SHERWOOD PARK LOT 9 BLOCK 1 N 47.5 S 106 FT LT 8 & N 47.5 S 106 W 18 FT – 47.5 X 78.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$78,000 for tax year 2013.
3. William I. Dreibelbis (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$78,000 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 October 3, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. William I. Dreibelbis appeared at the hearing on behalf of the Taxpayer.
8. Larry Thomsen, an assessor for the Douglas County Assessor’s Office, was present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record Profile contained in the 2013 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$78,000 determination for tax year 2013 includes \$5,000 for land and \$73,000 for the improvement component.
10. The County’s Assessment Report indicates that the County Board’s \$73,000 determination attributable to the Subject Property’s improvement component for tax year 2013 is based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on

correlation of such characteristics with market area sales.<sup>1</sup> The Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement.

11. The Market Calculation Detail document states that \$73,000 in value attributable to the improvements is based on a determination that the condition of the Subject Property was Average for tax year 2013. The Taxpayer asserted that the Subject Property has a condition lower than Average. The Account Notes contained in the Assessment Report indicate that following the 2013 County Board hearing and determination, the County Assessor’s Office conducted an inspection of the Subject Property and recommends a change in condition to Poor.
12. The Account notes also indicate that the County Assessor noted that the Subject Property was assessed in tax year 2013 for a garage and a central heating and air conditioning system, but that the garage has no remaining value and the central heating and air conditioning system has not been functional for years.
13. The Assessment Report contains an updated Market Calculation Detail dated 2014 that expresses a new opinion of value for the Subject Property based upon the changes to conditions and characteristics noted from the County Assessor inspection. Based on the documents and statements submitted at the hearing before the Commission, Mr. Thomsen of the County Assessor’s Office stated that the updated Market Calculation detail indicated the actual value of the Subject Property for tax year 2013. Thomsen offered a revised opinion of value for the improvement component in the amount of \$35,364 for tax year 2013.
14. The Property Record Profile contained in the 2013 Assessment Report indicates that the County Board’s \$5,000 land determination for tax year 2013 is based on the County Assessor’s land valuation model.
15. The Taxpayer opined that the actual value of the Subject Property was \$30,000 to \$35,000. He asserted that his opinion of value was supported by the offers he received for the Subject Property as a personal representative of his mother’s estate following the his mother’s death in 2002.
16. The Taxpayer further asserted that he received a demolition order for the Subject Property in 2009, and that he had appealed to the city as noted in the agenda from the Building Board of Review for Omaha, Nebraska on August 10, 2009. The Taxpayer asserted that the number of properties within Omaha, Nebraska that are subject to similar orders, and the amount of appeals from those orders, has created a backlog and that his appeal has not yet been resolved. In further support of the condition of the Subject Property the Taxpayer provide a complaint filed against the Taxpayer by the State of Nebraska in the County Court of Douglas County, Nebraska alleging the Subject Property constituted an unsafe structure contrary to Omaha City Ordinances.
17. The Taxpayer also present screenshots for other real property, a property located at 1819 Farnam Street and a property located at 1102 South 31<sup>st</sup> Street, which he asserted were subject to similar conditions, and sold or were assessed at lower actual values.

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<sup>1</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416 and 427.

## STANDARD OF REVIEW

18. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</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>3</sup>
19. 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>4</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>5</sup>
20. 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>6</sup>
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</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>8</sup>
23. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>
24. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>10</sup>
25. 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>11</sup>

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<sup>2</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>3</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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

<sup>10</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>11</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

26. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>12</sup>
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>13</sup>
28. 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>14</sup>

#### VALUATION ANALYSIS

29. The Taxpayer's assertions that the condition of the Subject Property is not Average is supported by the Mr. Thomsen's revised opinion of value..
30. The Commission finds that Mr. Thomsen revised opinion of value together with the submissions and statements in the hearing constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
31. In part because Property Record Files were not submitted by the Taxpayer for the two parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's \$30,000 - \$35,000 opinion of value does not constitute the best evidence of the value of the Subject Property for tax year 2013.
32. 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.*

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<sup>12</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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

33. The Commission finds that Mr. Thomsen’s revised opinion of value which based upon the updated 2014 Market Calculation Detail is based upon a common accepted mass appraisal approach and constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

**CONCLUSION**

- 34. 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.
- 35. 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 taxable 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	\$ 5,000
Improvements	\$35,364
Total	\$40,364

- 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 2013.
- 7. This Decision and Order is effective on October 7, 2014.

Signed and Sealed: October 7, 2014

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Thomas D. Freimuth, Commissioner