

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

Peter Fink,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 10C-242

Order Affirming the Determination of the  
Douglas County Board of Equalization

**For the Appellant:**

Peter Fink,  
Pro Se

**For the Appellee:**

Sandra Connolly,  
Deputy Douglas County Attorney

Appeal heard before Commissioners Robert W. Hotz and Thomas D. Freimuth.

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located at 13306 B Street, in Omaha, Douglas County, Nebraska. The parcel is improved with a transmission repair shop. The legal description of the parcel and the property record card for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the subject property was \$511,200 for tax year 2010, including \$110,800 for the land and \$400,400 for the improvements.<sup>1</sup> Peter Fink (Taxpayer) protested this assessment to the Douglas County Board of Equalization (County Board) and requested an assessed value of \$434,500, including \$110,800 for the land and \$323,700 for the improvement.<sup>2</sup> The County Board determined that the assessed value for tax year 2010 was \$511,200.<sup>3</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 11, 2012.

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<sup>1</sup> Exhibit 1:1.

<sup>2</sup> E4:1.

<sup>3</sup> E1:1.

### 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 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

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<sup>4</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 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.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2010 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).

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>

## IV. VALUATION

### A. 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>13</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 77-1371, (2) income approach, and (3) cost approach."<sup>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</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>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</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>18</sup>

### B. Summary of the Evidence

Peter Fink, owner of the Subject Property, testified that his opinion of value for the Subject Property was between \$398,000 and \$415,000. Fink asserted that the County Board had lowered the assessed value for his property for tax year 2011 to \$398,000. Fink testified that because the

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<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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

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

<sup>15</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>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>17</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

County Board had lowered his 2011 assessed value to \$398,000 the 2010 assessed value should be lowered also.

The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>19</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>20</sup> For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation. The Taxpayer's assertion that the 2010 valuation of the Subject Property should be the same as the subsequent determination of actual value for 2011 is without merit.

The County Assessor utilized both the cost approach and the income approach to value the Subject Property, but reconciled the final assessed value to the value indicated by the cost approach.<sup>21</sup> The Taxpayer did not dispute any of the cost approach details. No evidence was offered to dispute the cost approach value. Under the County Assessor's income approach, the total indicated value would have been greater than the assessed value.<sup>22</sup>

## V. EQUALIZATION

### A. 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>23</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>24</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>25</sup> 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>26</sup> Uniformity

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<sup>19</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>20</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>21</sup> E2:2.

<sup>22</sup> E2:16.

<sup>23</sup> *Neb. Const.*, Art. VIII, §1.

<sup>24</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>25</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>26</sup> 8 Neb.App. 582, 597 N.W.2d 623 (1999).

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>27</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>28</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>29</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. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>30</sup>

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

The land component of the Subject Property was assessed at \$4 per square foot.<sup>31</sup> The comparable properties offered by the County Board in its assessment report prepared by the County Assessor indicate that the land component for each comparable property, except one, was assessed at the same or a greater amount per square foot.<sup>32</sup> There is not sufficient evidence in the record for the Taxpayer to obtain relief based upon the per square foot valuation of the land components of the Subject Property and the comparable properties.

The subject property was valued using the cost approach.<sup>33</sup> The properties offered as comparables appear to be uniformly valued. The evidence before the Commission concerning the cost approach to valuation used to determine the assessed value of the Subject Property and the comparable properties did not contain a basis for equalized relief.

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<sup>27</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>28</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>29</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>30</sup> *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

<sup>31</sup> E2:5 (\$110,800 / 27,700 square feet).

<sup>32</sup> See, Exhibit 2, pages 24, 28, 32, 36, and 40. While the comparable property located at Exhibit 2, page 40 has a land component with an assessed per square foot value of \$3.50 (\$194,300 / 55,502), commonly accepted mass appraisal techniques relating to the differences in size between the subject property and comparable property may explain the difference, since the area of the Subject Property is 27,700 square feet and the area of the comparable property is twice as large, with 55,502 square feet.

<sup>33</sup> E2:8.

**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.

For all of the reasons set forth above, the decision of the County Board is affirmed.

**VII. 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 2010 is affirmed.<sup>34</sup>
2. The assessed value of the Subject Property for tax year 2010 is:

Land	\$110,800
<u>Improvements</u>	<u>\$400,400</u>
Total	\$511,200

3. This 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 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Order shall only be applicable to tax year 2010.
7. This Order is effective for purposes of appeal on January 4, 2013.

Signed and Sealed: January 4, 2013

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Robert W. Hotz, Commissioner

SEAL

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<sup>34</sup> Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the county board of equalization at the protest proceeding.

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.) and other provisions of Nebraska Statutes and Court Rules.

**Commissioner Freimuth, Concurring.**

I concur only in the result that the value of the Subject Property is \$511,200 for tax year 2010.

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Thomas D. Freimuth, Commissioner