

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

Randy R. Sternfels,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 11R-054 & 12R-559

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

**For the Appellant:**  
Randy R. Sternfels,  
Pro Se

**For the Appellee:**  
Malina M. Dobson,  
Deputy Douglas County Attorney

These appeals were heard by Commissioners Robert W. Hotz and Thomas D. Freimuth.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located at 18668 Nina Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 1,946 square foot home built in 2004. The legal description of the parcel is found at Exhibit 2, page 2. The property record card for the Subject Property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$326,900 for tax year 2011.<sup>1</sup> Randy R. Sternfels (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$283,260.<sup>2</sup> The County Board determined that the assessed value for tax year 2011 was \$326,900.<sup>3</sup>

The Assessor determined that the assessed value of the Subject Property was \$326,900 for tax year 2012.<sup>4</sup> The Taxpayer protested this assessment to the County Board and requested an

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

<sup>2</sup> E3:1.

<sup>3</sup> E1:1. The record contains a separate set of Exhibits, separately numbered, for each tax year.

<sup>4</sup> E1:1.

assessed valuation of \$281,119.<sup>5</sup> The County Board determined that the assessed value for tax year 2012 was \$311,400.<sup>6</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits. The Commission held a consolidated hearing on February 13, 2013.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>7</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>8</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>9</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>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup>

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<sup>5</sup> E4:1.

<sup>6</sup> E1:1.

<sup>7</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>8</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

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>12</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>13</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>14</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>15</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>16</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>17</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>18</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

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<sup>12</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>13</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>17</sup> *Id.*

<sup>18</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

as assessed value.<sup>19</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>20</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>21</sup>

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

The County Board based its determination of value for tax year 2011 on the Assessor's opinion of actual value as indicated by the cost approach.<sup>22</sup> On January 13, 2012, the Assessor inspected the Subject Property.<sup>23</sup> The County Board made its determination of value for tax year 2012, after the inspection, and consistent with a referee's recommendation in the protest proceeding.<sup>24</sup>

The Taxpayer called Larry Thomsen to testify. Thomsen was employed by the Assessor as a supervisor for residential assessments and the head of the Assessor's section regarding residential appeals. He testified that he signed the Assessment Report for both tax years.<sup>25</sup> Thomsen stated that the Assessor used the cost approach to value the Subject Property for tax years 2011 and 2012. He testified that an inspection was conducted on January 13, 2012.<sup>26</sup> Thomsen testified that the Assessor's determination of the taxable value for the Subject Property for both tax years was \$49,500 for the land component and \$277,400 for the improvement component, for a total value of \$326,900, as indicated by the cost approach.

Thomsen explained that the Subject Property contained a ranch style home, and that it was valued using the same model as other similar ranch style homes. He asserted that Exhibits 20 to 23, provided by the Taxpayer, were 1.5 story or 2 story homes and not ranch style. Thomsen testified that the cost approach model values for 1.5 story or 2 story homes came in higher than what was indicated by their sales, so extra depreciation was applied in addition to physical depreciation. He stated that this extra depreciation was included as functional obsolescence; even though functional obsolescence is generally only attributed to older homes. Thomsen

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<sup>19</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>20</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>21</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>22</sup> E2.

<sup>23</sup> E2:7.

<sup>24</sup> E2:40.

<sup>25</sup> E2 in both appeals.

<sup>26</sup> E2:7. The inspection occurred after the County Board determination for tax year 2011. The inspection occurred after the Assessor had noticed value for tax year 2012, but before the County Board determination was made for tax year 2012.

explained that this was done to bring the model for the properties into line with sales. He testified that this adjustment was not necessary for the cost approach model for Ranch style properties because that model came in more in line with sales.

Thomsen asserted that the impact of any macro-economic conditions on the actual value of the Subject Property at the times of assessment was reflected in the arm's length transactions driven by the market demands at those times, and included in applicable models and cost calculations. He stated that he did not utilize averages of the assessed values per square foot or the sales price per square foot to value the Subject Property, as was suggested by the Taxpayer. Thomsen asserted that this technique was not a commonly accepted mass appraisal technique for determining the market value of real property.

Randy R. Sternfels, owner of the Subject Property, testified that he paid \$296,000 for the Subject Property in 2004.<sup>27</sup> He explained that he finished his basement in 2005 and that his assessment had increased after the additional basement finish was added.<sup>28</sup>

Sternfels acknowledged that there were no errors in the County Assessor's determinations of the Subject Property's characteristics found at Exhibit 2 page 15.

Sternfels asserted that rather than using a cost approach to value the Subject Property, the County Assessor should have averaged the assessed values per square foot of similar properties. He provided two alleged comparable properties.<sup>29</sup> Sternfels made no adjustments for differences between the Subject Property and the alleged comparable properties to make the alleged comparable properties more similar to the Subject Property, but instead determined the average per square foot assessed value of the unadjusted alleged comparable properties, and then multiplied the average assessed value per square foot by the total area of the Subject Property to arrive at an opinion of value of \$283,260. This is not a commonly accepted mass appraisal technique for determining the market value of real property. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>30</sup> The approaches identified are the sales comparison approach, the income

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<sup>27</sup> E6:1.

<sup>28</sup> E2:18.

<sup>29</sup> E5:1-2.

<sup>30</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

approach, the cost approach, and other professionally accepted mass appraisal methods.<sup>31</sup> Such averaging of assessed values is not recognized as an appropriate approach.

The Taxpayer's opinion of value was determined by multiplying the average assessed value per square foot of the alleged comparable properties by the total area of the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property.<sup>32</sup> No evidence was received that the Taxpayer's approach was a professionally accepted mass appraisal or fee appraisal approach. Because the Taxpayer's opinion of value was not determined by a professionally accepted appraisal approach, the Commission gives it little weight.

## 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>33</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>34</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>35</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>36</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>37</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>38</sup> The constitutional requirement of

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Neb. Const.*, Art. VIII, §1.

<sup>34</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>35</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>36</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>37</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>38</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).

uniformity in taxation extends to both rate and valuation.<sup>39</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>40</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>41</sup>

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

Sternfels asserted that his basement finish was assessed higher than other comparable properties, and that his assessed value increased more in one year than other comparable properties. He further asserted that comparable properties with similar basement finishes were not assessed for the finished basement area, however, he offered no evidence to support this assertion.

The Commission notes that the assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>42</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>43</sup>

The Commission received evidence of several ranch style homes with a “good” quality rating and finished basements, which were comparable to the Subject Property. An examination of the Subject Property and these comparable properties for tax year 2011 indicates that the Subject Property’s basement finish was valued at \$31.89 per square foot,<sup>44</sup> while the basement finish of the comparable properties was valued at \$32.15,<sup>45</sup> \$32.41,<sup>46</sup> and \$31.86 per square foot.<sup>47</sup> Similarly, an examination of the Subject Property and comparable properties provided for tax year 2012 indicates that the Subject Property’s basement finish was again valued at \$31.89 per

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<sup>39</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>40</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>41</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>42</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>43</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>44</sup> E6:6.

<sup>45</sup> E2:22.

<sup>46</sup> E2:31.

<sup>47</sup> E2:40.

square foot,<sup>48</sup> while the basement finish of the comparable properties was valued at \$31.71,<sup>49</sup> \$32.08,<sup>50</sup> and \$32.41 per square foot.<sup>51</sup> Based upon our review of these property record cards, the Commission finds that the assessed value per square foot of basement finish for the Subject Property was lower than most of the comparable properties, and that it was not grossly excessive in comparison.

## **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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable. The Commission further finds that there is not clear and convincing evidence that the valuations placed on the Subject Property when compared with similar properties was grossly excessive.

For all of the reasons set forth above, the determinations of the County Board should be 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 years 2011 and 2012 is affirmed.
2. The taxable value of the Subject Property for tax year 2011 is: \$326,900.00.
3. The taxable value of the Subject property for tax year 2012 is: \$311,400.00.
4. 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.).
5. The specific request by the Taxpayer for costs and filing fees is denied.
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

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<sup>48</sup> E6:6.

<sup>49</sup> E2:17.

<sup>50</sup> E2:25.

<sup>51</sup> E2:34.

7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2011 and 2012.
9. This Decision and Order is effective for purposes of appeal on July 2, 2013.

Signed and Sealed: July 2, 2013

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Robert W. Hotz, Commissioner

SEAL

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.

**Commissioner Freimuth, Concurring:**

I concur only in the result that the value of the subject property is \$326,900 for tax year 2011 and \$311,400 for tax year 2012.

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Thomas D. Freimuth, Commissioner