

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

Hanguang Wu & Shenyan Ma,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee,

Case No: 12R 754

Decision and Order Affirming Douglas  
County Board of Equalization

**For the Appellant:**

Timothy J. McReynolds, Esq.

**For the Appellee:**

Sandra Connolly & Meghan Bothe, Deputy  
Douglas County Attorneys.

This appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located at 6211 South 185<sup>th</sup> Avenue, Omaha, Douglas County, Nebraska. The parcel is improved with a 1,894 square foot home. The legal description of the parcel is found at Exhibit 2, page 3. The Property Record File for the Subject Property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$279,800 for tax year 2012. Hanguang Wu & Shenyan Ma (herein referred to as the “Taxpayer”) protested this assessment to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$246,100. The County Board determined that the taxable value for tax year 2012 was \$260,000.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. The Commission held a hearing on September 26, 2014.

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<sup>1</sup> E1.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>2</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>3</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>4</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>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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>7</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>8</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>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). "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>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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>8</sup> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>9</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>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</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>12</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>13</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>14</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>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

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

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Id.*

<sup>14</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>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## B. Summary of the Evidence

The Taxpayer purchased the Subject Property for \$260,000 on December 11, 2011.<sup>18</sup> Based on an inspection review performed by the County Assessor in 2012, the Subject Property was assessed at \$279,800 for tax year 2012 based on a cost approach (Land: \$34,000 + Improvement: \$245,800 = \$279,800).<sup>19</sup> The Taxpayer protested this valuation and obtained a reduction by the County Board to \$260,000 (Land: \$34,000 + Improvement: \$226,000 = \$260,000).<sup>20</sup>

Shenyan Ma testified for the Taxpayer. Ms. Ma testified that deferred maintenance issues were discovered after the Taxpayer's \$260,000 purchase in December 2011. Based on these issues, Ms. Ma offered a \$230,000 opinion of value for the Subject Property for tax year 2012.

Ms. Ma also asserted that the Taxpayer's \$260,000 purchase price actually amounted to \$254,000, due to transaction concessions. The Commission did not receive documentation to support this assertion, and the Property Record File indicates that the Taxpayer purchased the Subject Property for \$260,000 on December 7, 2011.<sup>21</sup>

Ms. Ma also asserted that the Subject Property was assessed at a higher value than other properties located in the same neighborhood for tax year 2012. In support of this assertion, the Taxpayer submitted analysis of five properties near the Subject Property.<sup>22</sup> The analysis is based on information derived from screenshots from the Douglas County Assessor's website.<sup>23</sup>

Larry Thomsen, an assessor with the Douglas County Assessor's Office, testified on behalf of the County Board (Mr. Thomsen is referred to herein as the "County's Appraiser"). At the hearing before the Commission, the County's Appraiser offered a revised opinion of value for the Subject Property in the amount of \$260,000 for tax year 2012. The County's Appraiser asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.

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<sup>18</sup> E2:3.

<sup>19</sup> Exhibit 2:3, E2:8, E2:11 – E2:13, E2:14.

<sup>20</sup> E2:14, E2:43 (two private sector Referees with appraisal certification hired by the County Board for the 2012 protest period recommended reduction of the County Assessor's \$279,800 notice value to the Taxpayer's \$260,000 purchase price in December 2011).

<sup>21</sup> E2:3.

<sup>22</sup> E4:1. Exhibit 4 page 1 indicates that the average assessed valuation of the five alleged comparable properties was \$129 per square foot of gross living area ("GLA") for tax year 2012, versus the Subject Property's \$137 per square foot assessment. Thus, Exhibit 4 page 1 asserts that the Subject Property should be equalized with the alleged comparable properties by reducing the Subject Property's assessed value for tax year 2012 to \$244,000 (1,894 GLA x \$129 psf = \$244,000, rounded).

<sup>23</sup> E4:1 – E4:19.

### C. Valuation Analysis

The Taxpayer offered an opinion of value in the Amount of \$230,000 for tax year 2012 based on deferred maintenance issues discovered after the \$260,000 purchase in December 2011. In support of her opinion of value, the Taxpayer submitted screenshots from the Douglas County Assessor's website indicating that the Subject Property was assessed at a higher value than other alleged comparable properties located in the same neighborhood.

The Property Record File (herein referred to as "PRF") indicates that the County Board did not rely upon the County Assessor's \$279,800 opinion of the actual value of the Subject Property as determined by a cost approach for tax year 2012.<sup>24</sup> Rather, relying on the recommendations of two private-sector Referees with appraisal certification hired for the 2012 protest period, the County Board reduced the County Assessor's \$279,800 notice value to the Taxpayer's December 2011 purchase price in the amount of \$260,000.<sup>25</sup> At the hearing before the Commission, the County's Appraiser offered a revised opinion of value for the Subject Property in the amount of \$260,000 for tax year 2012.<sup>26</sup>

The Commission is mindful that the Nebraska Court of Appeals has stated that "[s]ale price is not synonymous with actual value or fair market value."<sup>27</sup> The Commission also notes, however, that the Nebraska Supreme Court stated as follows in *Potts v. Board of Equalization of Hamilton County*: "where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration."<sup>28</sup>

The County Board's determination is based on the Taxpayer's purchase price, and the Taxpayer declined the opportunity for inspection to permit the County to determine whether the condition of the Subject Property was less than "Good" for tax year 2012.<sup>29</sup> Based on the evidence reviewed in this case, together with the Nebraska Supreme Court's holdings in *Potts*, the Commission finds that the \$260,000 sale of the Subject Property in December 2011 is a significant indicator of actual market value for tax year 2012. For these same reasons, the

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<sup>24</sup> See, E2:3, E2:14, E2:43.

<sup>25</sup> E2:14, E2:43.

<sup>26</sup> See, E2:8.

<sup>27</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637 (1998).

<sup>28</sup> *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

<sup>29</sup> E2:14; E2:43, E2:8 (account notes indicating Taxpayer refused inspection in 2013 for tax year 2012 purposes and beyond).

Commission further finds that the Taxpayer's opinion of value and assertions do not constitute clear and convincing evidence that the County Board's determination for tax year 2012 was unreasonable or arbitrary.

## 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>30</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>31</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>32</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>33</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>34</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>35</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>36</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>37</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>38</sup>

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<sup>30</sup> *Neb. Const.*, Art. VIII, §1.

<sup>31</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>32</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>33</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>34</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>35</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>36</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>37</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>38</sup> *Id.* at 673, 94 N.W.2d at 50.

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

The Taxpayer asserted that the 2012 assessed valuation of the Subject Property is not equalized with five nearby parcels. In support of this assertion, the Taxpayer submitted screenshots from the Douglas County Assessor's website regarding the characteristics of the alleged comparable properties.<sup>39</sup> The Taxpayer did not produce Property Record Files for the alleged comparable properties.

Paragraph 11 of the Commission's "Order To Vacate Single Commissioner Designation And Amended Order For Hearing And Notice" in this matter requires parties to provide the Commission with "[c]opies of the County's Property Record File for any parcel a party will assert is a comparable parcel."<sup>40</sup> Additionally, the Commission notes that paragraph 11 states that "[a] screen shot or print out of a 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."<sup>41</sup>

In part because Property Record Files were not submitted by the Taxpayer for the parcels submitted for consideration, together with a review of the documents and testimony received in evidence at the hearing, the Commission finds that the Taxpayer did not adduce clear and convincing evidence that the Subject Property was not equalized with similar properties for tax year 2012.

The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the properties submitted for comparison, in order to determine whether the ratio of one or more assessed to market values was less than 100% for tax year 2012. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.

## **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

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<sup>39</sup> E4:1 – E419.

<sup>40</sup> Case File (Order issued by the Commission to the Parties on December 12, 2013).

<sup>41</sup> Case File (Order issued by the Commission to the Parties on December 12, 2013).

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 appeal of the Taxpayer is denied.

## 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 2012 is affirmed.<sup>42</sup>
2. The assessed value of the Subject Property for tax year 2012 is: \$260,000.
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 year 2012.
7. This decision and order is effective for purposes of appeal on November 25, 2014.

Signed and Sealed: November 25, 2014.

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Thomas D. Freimuth, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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.

<sup>42</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.