

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

Wendy A. Hall,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13R 538

Decision and Order Reversing  
County Board of Equalization

**GENERAL BACKGROUND AND PROCEDURAL HISTORY**

1. The real property subject to appeal (herein referred to as the “Subject Property”) is a residential parcel located at 4731 North 40<sup>th</sup> Avenue, Omaha, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. The Douglas County Assessor assessed the Subject Property at \$33,300 for tax year 2013.
3. Wendy A. Hall (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a value of \$15,000.
4. The County Board determined that the assessed value of the Subject Property was \$33,300 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 10, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Bldg., 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Wendy A. Hall was present at the hearing for the Taxpayer.
8. Kurt Skradis, an appraiser with the Douglas County Assessor’s Office (herein referred to as the “County Appraiser”), was present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record File (PRF) contained in the Assessment Report submitted by the County for the Subject Property indicates that the Taxpayer purchased the Subject Property for \$37,000 on February 29, 2012. The Taxpayer stated that she paid in excess of the actual value of the parcel, due to seller financing and time constraints stemming from an inheritance requiring use of the proceeds for a home purchase.
10. The PRF for the Subject Property indicates that the County Board’s \$33,300 determination for tax year 2013 includes \$4,900 for land and \$28,400 for the improvement component.
11. The Assessment Report indicates that the County Assessor’s \$33,300 notice value for tax year 2013 attributable to the Subject Property’s improvement component is based on a sales comparison approach mass appraisal model derived from market area arm’s-length

sales and multiple regression analysis.<sup>1</sup> Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.<sup>2</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 component.<sup>3</sup>

12. The Taxpayer provided the Commission with an analysis of 21 sales of properties near the Subject Property in support of her \$15,000 opinion of value. The Taxpayer contended that the analysis of sales indicates that the Subject Property is overvalued for tax year 2013.
13. In support of her \$15,000 opinion of value the Taxpayer provided the following: (1) screenshots from the Douglas County Assessor’s website of the 21 alleged comparable sale properties; (2) photos of the Subject Property; (3) MLS documentation relating to the Subject Property; and (4) newspaper information regarding crime in the neighborhood where the Subject Property is located.
14. The Assessment Report includes the PRF for the Subject Property and the County Assessor’s alleged comparable sale properties.
15. The County Appraiser asserted that the Taxpayer’s alleged comparable sale properties are not truly comparable to the Subject Property.
16. The County Appraiser offered a revised opinion of value for the Subject Property of \$26,231 for tax year 2013, rounded to \$26,200. The County Appraiser stated that he based his revised opinion on a review of the Taxpayer’s pictures and MLS documentation submitted at the hearing before the Commission, which indicated that the Subject Property does not have an unfinished basement as indicated on the County Assessor’s “Market Calculation Detail” document found at page 12 of the Assessment Report. As a result of this review, the County Appraiser removed the \$7,056 amount attributable to the unfinished basement from the improvement component of the Subject Property.<sup>4</sup>

### **STANDARD OF REVIEW**

17. 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 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>
18. 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

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<sup>1</sup> Assessment Report, pg. 8.

<sup>2</sup> *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

<sup>3</sup> Assessment Report, pg. 12.

<sup>4</sup> \$28,387 - \$7,056 = \$21,331; \$21,331 + \$4,900 (land) = \$26,231, or \$26,200 rounded.

<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).

<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).

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>

19. 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>
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>
21. 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>

### 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>12</sup>
23. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>13</sup>
24. 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>14</sup>
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</sup>
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>16</sup>
27. 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

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<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).

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

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

<sup>15</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>16</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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>17</sup>

### VALUATION ANALYSIS

28. The Taxpayer derived an opinion of value in the amount of \$15,000 for the Subject Property for tax year 2013 based on the average sales prices of alleged comparable properties.
29. The Taxpayer's opinion of value is based on the average sales prices of alleged comparable properties can best be described as an attempted sales comparison approach. In the sales comparison approach an opinion of value is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property.<sup>18</sup> An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.<sup>19</sup> This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.<sup>20</sup>
30. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.<sup>21</sup> If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.<sup>22</sup>
31. The documents and statements of the County's Appraiser indicate that the County Board's determination of value for tax year 2013 was based on incorrect information regarding the Subject Property's slab foundation (i.e., absence of basement).
32. The County Appraiser asserted that his revised opinion of value based on the removal of the basement square footage was \$26,231 for tax year 2013, rounded to \$26,200.
33. The Commission finds that it was unreasonable or arbitrary for the County Board to adopt an opinion of value for the Subject Property based on an incorrect assignment of value to a basement component for tax year 2013.
34. The Commission finds that the actual value of the Subject Property for tax year 2013 should be \$26,200.

### GENERAL EQUALIZATION LAW

35. "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

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<sup>17</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>18</sup> *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

<sup>19</sup> *Id.* at 301-302.

<sup>20</sup> *Id.*

<sup>21</sup> See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>22</sup> See, Appraisal Institute, *The Appraisal of Real Estate*, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

<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).

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>

36. 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>
37. 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>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>
38. 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 [sic].”<sup>30</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>31</sup>
39. “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>32</sup>
40. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”<sup>33</sup>

## EQUALIZATION ANALYSIS

41. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>34</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>35</sup> or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.<sup>36</sup>

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

<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, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>31</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>32</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>33</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>34</sup> See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>35</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>36</sup> See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

42. 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.*

43. In part because PRFs were not submitted by the Taxpayer for the parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission does not find clear and convincing evidence that the Subject Property was not equalized with similar properties for tax year 2013.
44. 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 2013. 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.

### CONCLUSION

45. 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.
46. 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 and reversed.

### 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 2013 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

|                     |                  |
|---------------------|------------------|
| Land                | \$ 4,900         |
| <u>Improvements</u> | <u>\$ 21,300</u> |
| Total               | \$ 26,200        |

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 November 21, 2014.

Signed and Sealed: November 21, 2014.

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Thomas D. Freimuth, Commissioner