

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

Crystal A. Rhoades,  
Appellant,

Case No: 13R 436

v.

Decision and Order Reversing  
County Board of Equalization

Douglas County Board of Equalization,  
Appellee.

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The parcel under appeal, which is referred to herein as the “Subject Property,” is improved with a residence located at 4565 Shirley Street, Omaha, Douglas County, Nebraska. The Subject Property’s legal description is contained in the Case File.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$170,400 for tax year 2013.
3. Crystal A. Rhoades (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, requesting a valuation in the amount of \$160,800.
4. The County Board determined that the taxable value of the Subject Property was \$170,400 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 March 13, 2015, 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. The hearing before the Commission was continued at that time by agreement of the Parties to permit the Assessor to inspect the interior of the Subject Property’s residence. The hearing was resumed on July 27, 2015.
7. Crystal A. Rhoades appeared at the hearing before the Commission held on March 13, 2015, and on July 27, 2015.
8. G. Kevin Corcoran, an Appraiser employed by the Douglas County Assessor’s Office, was present for the County Board at the hearing before the Commission on March 13, 2015. Larry Thomsen, an Appraiser employed by the Douglas County Assessor’s Office, and Mary Cederberg, an employee of the Douglas County Assessor’s Office, were present for the County Board at the hearing before the Commission on July 27, 2015.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record File (“PRF”) contained in the 2013 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$170,400 determination for tax year 2013 includes \$10,000 for land and \$160,400 for the improvement component which was constructed in 1940.

10. The PRF's sales history indicates that the Taxpayer purchased the Subject Property for \$148,000 on March 11, 2005.
11. The Assessment Report indicates that the County Board's determination attributable to the Subject Property's improvement component for tax year 2013 is based on the County Assessor's 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>
12. The Assessment Report contains a document entitled "Market Calculation Detail" (herein sometimes referred to as the "MCD") that sets forth the value assigned to each of the various County Assessor mass appraisal model characteristics relating to the Subject Property's improvement component for tax year 2013.
13. The Taxpayer asserted that that the County overvalued the Subject Property in part due to the following incorrect characteristics referenced on the MCD: (1) finished basement area; and (2) above-ground gross living area ("GLA"). Additionally, the County asserted that the MCD incorrectly did not attribute value to the improvement component's fireplace. As a result, by agreement of the Parties, the Commission continued the portion of the hearing held on March 13, 2015, in order to correct Subject Property characteristics.
14. Based on the documents and statements submitted at the hearing before the Commission on March 13, 2015, and on July 27, 2015, Mr. Thomsen of the County Assessor's Office offered a revised opinion of value for the Subject Property's improvement component in the amount of \$146,565 for tax year 2013, which reflects the following MCD characteristic corrections prior to application of the applicable .97 Neighborhood adjustment:<sup>2</sup> (1) reduction of GLA from 1,503 sq. ft. to 1,367 sq. ft.; (2) removal of \$5,520 in value attributable to finished basement; (3) addition of \$4,025 in value attributable to a fireplace; and (4) addition of \$2,875 in value attributable to 2 bathrooms rather than 1.5 bathrooms. Mr. Thomsen also offered a revised opinion of value for the Subject Property's land component in the amount of \$5,300 for tax year 2013. Consequently, Mr. Thomsen's revised opinion of value for the Subject Property is \$151,865 for tax year 2013 (Land \$5,300 + Improvement \$146,565 = \$151,865).
15. The Taxpayer submitted documents and statements at the hearing before the Commission that contends that the actual value of the Subject Property was \$160,800 for tax year 2013 (\$5,800 Land + \$155,000 Improvement = \$160,800).
16. In support of her opinion of value, the Taxpayer submitted screenshots from the County Assessor's website for several parcels in close proximity to the Subject Property (PRFs were not submitted). The Taxpayer asserted that at least some of these parcels were

---

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

<sup>2</sup> The County's Appraiser emphasized that his revised opinion of value, especially as it relates to the GLA reduction from 1,503 sq. ft. to 1,367 sq. ft., applies to tax year 2013 only, and that any future use of 1,367 sq. ft. for GLA purposes would require an interior inspection. The County Appraiser's revised opinion of value for the Subject Property's improvement component is calculated as follows for tax year 2013, prior to the MCD's .97 Neighborhood adjustment: \$5,060 (Attached Garage) + (\$12,099.15) (Central Heating & Air) + \$15,720.50 (Revised "Masonry Common Brick" based on 1,367 sq. ft. GLA rather than 1,503 sq. ft.) + \$11,500 (Revised value reflects \$2,875 increase attributable to 2 bathrooms rather than 1.5) + (-5,520) (Revision reflects removal of finished basement value) + \$86,462.75 (Revised value attributable to 1,367 sq. ft. GLA rather than 1,503 sq. ft.) + 15,000.60 (Unfinished Basement) + (-18,250) (Market Age) + \$25,000 (Constant) = \$151,098 (Revised improvement value prior to .97 Neighborhood adjustment). Revised improvement value for tax year 2013: \$151,098 x .97 = \$146,565.

similar to the Subject Property. The Taxpayer also stated that these parcels were assessed at lower actual values in comparison to the Subject Property.

17. The County Board's Assessment Report contains the PRFs for the Subject Property and three alleged comparable properties.
18. The County's Appraisers asserted that a comparison analysis regarding the Taxpayer's alleged comparable properties is limited without the availability of PRFs.
19. The County's Appraisers asserted that the parcels submitted by the Taxpayer were not comparable to the Subject Property without adjustments.

### STANDARD OF REVIEW

20. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</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>4</sup>
21. 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>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>
22. 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>
23. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

### GENERAL VALUATION LAW

24. 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>
25. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>10</sup>

---

<sup>3</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>4</sup> *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) (2014 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> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

26. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>11</sup>
27. 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>12</sup>
28. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>13</sup>
29. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>14</sup>
30. 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>15</sup>

### **VALUATION ANALYSIS**

31. The Taxpayer’s assertions that the characteristics of the Subject Property are not correct is supported by the County Appraiser’s revised opinion of value.
32. The Commission finds that the County Appraiser’s revised opinion of value together with the submissions and statements during the hearing before the Commission constitute clear and convincing evidence that the County Board’s determination was unreasonable or arbitrary for tax year 2013.
33. The Commission finds that the County Appraiser’s \$151,865 revised opinion of value constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

### **GENERAL EQUALIZATION LAW**

34. “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>16</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>17</sup> The purpose

---

<sup>11</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>12</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>13</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>14</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

<sup>16</sup> *Neb. Const.*, Art. VIII, §1.

<sup>17</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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>18</sup>

35. 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>19</sup>
36. 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>20</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>21</sup>
37. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>22</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 her 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>23</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>24</sup>
38. “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>25</sup>
39. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”<sup>26</sup>

## EQUALIZATION ANALYSIS

40. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>27</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>28</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>29</sup>
41. For equalization analysis purposes, the Taxpayer submitted screenshots from the County Assessor’s website for several parcels within close proximity of the Subject Property.

---

<sup>18</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>19</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>20</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>21</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>22</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>23</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>24</sup> *Id.* at 673, 94 N.W.2d at 50.

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

<sup>26</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>27</sup> See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>28</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>29</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. A review of the screenshots submitted by the Taxpayer does not disclose violation of equalization principles for tax year 2013 in a clear and convincing manner. The Commission notes that its equalization analysis is limited because PRFs for the parcels submitted by the Taxpayer for consideration were not presented.
43. The Commission notes that 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.*

44. For the reasons above, the Commission finds that the Taxpayer’s has not provided clear and convincing evidence that the properties submitted for consideration were assessed in violation of “substantially similar” equalization principles for tax year 2013.
45. 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.
46. Based on a review of the Taxpayer’s screenshots submitted for consideration, together with a review of documents and statements submitted at the hearing, the Commission further finds that there is not clear and convincing evidence that characteristics of these parcels were misclassified for purposes of equalization review/relief.

**CONCLUSION**

47. 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.
48. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board was 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 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	\$ 5,300
<u>Improvements</u>	<u>\$146,565</u>
Total	\$151,865

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 (2014 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 July 31, 2015.

Signed and Sealed: July 31, 2015.

---

Thomas D. Freimuth, Commissioner