

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

Hurlbut Trust, Fred J. Hurlbut, Trustee  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee,

Case Nos: 12R 156, 13R 131 & 14R 134

Decision and Order Affirming the  
Determination of the Lancaster County  
Board of Equalization

**For the Appellant:**

Fred J. Hurlbut, Trustee  
Pro Se

**For the Appellee:**

Ryan M. Swaroff  
Deputy Lancaster County Attorney

**I. THE SUBJECT PROPERTY**

The Subject Property is residential parcel located at 4727 Union Hill Road, in the City of Lincoln, Lancaster County, Nebraska. The parcel is improved with a 2,669 square foot ranch style home. The legal description of the parcel is found at Exhibits 1, 2, and 3. The property record card for the Subject Property is found at Exhibits 1, 2, and 3.

**II. PROCEDURAL HISTORY**

The Lancaster County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$464,900 for each of the three tax years 2012, 2013, and 2014.<sup>1</sup> The Hurlbut Trust (the Taxpayer) protested each of these assessments to the Lancaster County Board of Equalization (the County Board) and requested a taxable value of \$437,258 for tax years 2012 and 2013,<sup>2</sup> and \$373,600 for tax year 2014.<sup>3</sup> The County Board determined that the taxable value for each of the three tax years, 2012, 2013, and 2014 was \$464,900.<sup>4</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 7, 2015.

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<sup>1</sup> Exhibits 1-3.

<sup>2</sup> Exhibits 4:3 and 5:2.

<sup>3</sup> Exhibit 6:2.

<sup>4</sup> Exhibit 1.

Commissioners Thomas D. Freimuth and Nancy J. Salmon participated in the hearing. Without objection, the Commission took notice of the case files for purposes of jurisdiction. Exhibits 1 to 12 were received in evidence and testimony was received from Fred J. Hurlbut for the Taxpayer and from Alice Lauer and Tom Kubert for the County Board. Subsequent to the hearing on August 7, 2015, and prior to the issuance of a Decision and Order by the Commission, Commissioner Freimuth resigned from the Commission.

On September 17, 2015, Commissioners Robert W. Hotz and Nancy J. Salmon held a hearing with the parties present. The parties were advised that as a result of the resignation of Commissioner Freimuth, the Commission lacked a majority of Commissioners present to issue a Decision and Order and that the proceedings of August 7, 2015 would be vacated and that the matter would be set for a new hearing.<sup>5</sup> The parties agreed to stipulate to the submission of the evidence received on August 7, 2015 and to only make closing arguments at the new hearing.

According to the stipulation, on January 7, 2016, the testimony and exhibits as submitted in the hearing on August 7, 2015 were received in evidence and the parties made closing arguments before Commissioners Robert W. Hotz and Nancy J. Salmon.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>6</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>7</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

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<sup>5</sup> See, Neb. Rev. Stat. §77-5016(13) (2014 Cum. Supp.), "The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted."

<sup>6</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). "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>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>8</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>9</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</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>11</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>12</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>13</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>14</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>15</sup>

#### IV. VALUATION

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

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<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2014 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> *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>13</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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 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>

## V. EQUALIZATION

“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>22</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>23</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>24</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>25</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>26</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result

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<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).

<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> *Neb. Const.*, Art. VIII, §1.

<sup>23</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>24</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>25</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>26</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

may be that it is assessed at less than the actual value.<sup>27</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>28</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>29</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>30</sup>

## VI. SUMMARY OF THE EVIDENCE

Fred J. Hurlbut testified as to his belief that the Subject Property was overassessed for each of the three tax years. Hurlbut principally asserted that the assessment of the Subject Property, when compared to the assessment of the property next door at 4717 Union Hill Road (the Comparable Property), was overassessed.

Hurlbut asserted that the Subject Property and the property at 4717 Union Hill Road were similar, but not identical. Both properties were located in a golf course subdivision. And both were rated as good quality and good condition. The principal difference between the Subject Property and the Comparable at 4717 Union Hill Road was that the Subject Property was a one-story ranch home while the Comparable was a 1½ story home. The Comparable also had approximately 2% more gross square footage of living area,<sup>31</sup> and the Comparable had approximately 6% more basement finish.<sup>32</sup> The Subject Property also had an exterior of 100% masonry while the Comparable had only 50% masonry in its exterior. Hurlbut asserted that the differences in the characteristics of the two properties could not account for the difference of \$69,900 in assessment between the two properties.<sup>33</sup> The Taxpayer testified that the County Assessor did not use 4717 Union Hill Road as a comparable to the Subject Property, even though it sold in 2012. He opined that 4717 Union Hill Road was the most comparable property to the Subject Property because of location and square footage.

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<sup>27</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>28</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>29</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>30</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>31</sup> 2,669 / 2,726 = .9791.

<sup>32</sup> 1,500 / 1,600 = .9375.

<sup>33</sup> \$464,900 - \$395,000 = \$69,900.

According to the property record files, the Subject Property and the property at 4717 Union Hill Road generally compare as follows:

	Gross Living Area Square Footage (SF)	Basement Finish Square Footage (SF)	Story Height	Quality	Condition	Masonry (percentage) of exterior)	Year Built	Assessed Value
Subject Property: 4727 Union Hill Road <sup>34</sup>	2,669 SF	1,500 SF	1 Story	Good	Good	100%	1999	\$464,900
Comparable Property: 4717 Union Hill Road <sup>35</sup>	2,726 SF	1,600 SF	1½ Story	Good	Good	50%	1998	\$395,000

Alice Lauer, an employee of the County Assessor, testified on behalf of the County Board. She explained the procedure for how the County Assessor arrived at the assessed value of the Subject Property. Her opinion of value for 2012, 2013, and 2014 was \$464,900. Lauer testified that the Sales Comparison Approach was used to assess the Subject Property.

Lauer testified that the property at 4717 Union Hill Road was not comparable to the Subject Property because it was a 1½ story home while the Subject Property was a one-story home. She testified that it costs more to build a one-story home than a 1½ story home of the same square footage because the one-story structure requires more foundation and roofing, and the footprint of the 1½ story structure is smaller. She also testified that a 1½ story home will sell for less per square foot than a one-story home in the same market. Lauer testified that she would not compare two different improvement types when identifying comparables for a Subject Property.

Tom Kubert, a licensed appraiser, also testified on behalf of the County Board. Kubert testified that he was a review referee for the County Board. In that role, he reviewed all of the evidence that Hurlbut presented to the County Board in the Protest proceedings for tax years 2012, 2013, and 2014 and that it was his recommendation at that time to not recommend any changes to the assessment made by the County Assessor. Kubert testified that during the tax

<sup>34</sup> Exhibits 4 to 6.

<sup>35</sup> Exhibit 4:19-21, Exhibit 5:19-21, Exhibit 6:20-22.

years in question a 1½ story home sold for less per square foot than a one-story home in the same market. He opined that the market favored the one-story homes.

Kubert testified that after hearing the evidence in this appeal he would not make a recommendation for an adjustment of the Subject Property's taxable value. Kubert further testified that Hurlbut had been contacted twice by letter and once by phone call to do an interior and exterior inspection of the property, but that Hurlbut had declined an inspection.

The Commission finds that there is persuasive evidence that one-story homes and 1½ story homes were appropriately assessed in Lancaster County as not being in the same market, and that no evidence was offered by the Taxpayer to rebut this evidence. Therefore, the Commission finds that there is no evidence of a lack of uniformity in the assessments of the Subject Property and other comparable properties in Lancaster County.

## **VII. 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. The Commission also finds that there is not clear and convincing evidence that valuation placed on the Subject 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 a mere error of judgement.

For all of the reasons set forth above, the determinations by the County Board for tax years 2012, 2013, and 2014 should be affirmed.

## **VIII. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2012, 2013, and 2014 are affirmed.
2. The taxable value of the Subject Property for each tax year 2012, 2013, and 2014 is \$464,900.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2012.
7. This Decision and Order is effective for purposes of appeal on January 13, 2016.

Signed and Sealed: January 13, 2016

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Robert W. Hotz, 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 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.