

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Erick Alvarez,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1166

Decision and Order Affirming Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on December 4, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Erick and Carrie Alvarez (Taxpayers) were present at the hearing.
3. Larry Thomsen, Appraiser from the Douglas County Assessor’s Office, was present for the Douglas County Board of Equalization (the County).
4. The Subject Property (Subject Property) is a residential parcel improved with a 1,818 square foot ranch style single family dwelling, with a legal description of: Lot 64 Pacific Woods, Elkhorn, Douglas County, Nebraska.

Background

5. The Douglas County Assessor assessed the Subject Property at \$289,400 for tax year 2012.
6. The Taxpayer protested this value to the Douglas County Board of Equalization for tax year 2012.
7. The Douglas County Board of Equalization determined that the assessed value of the Subject Property was \$289,400 for tax year 2012.
8. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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

¹ 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

10. 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.”³ 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.”⁴
11. 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.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
14. “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.”⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ 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.¹⁰
15. 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.¹¹ 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.¹² Taxpayers are entitled to have their property assessed uniformly and

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

⁷ 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).

⁸ *Neb. Const.*, Art. VIII, §1.

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *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).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

proportionately, even though the result may be that it is assessed at less than the actual value.¹³

16. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴ 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].”¹⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.¹⁶ “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.”¹⁷
17. The Taxpayer asserted that the Subject Property was not equalized with three alleged comparable properties in the Subject Property’s neighborhood and provided the Commission with the property records for the three alleged comparable properties.
18. The Taxpayer compared the assessed value per square foot of the dwellings on the three comparable properties and the improvement on the Subject Property. The Commission notes that the Subject Property has 60 square foot of basement and the comparable properties have finish in the basements as follows: Hall 1,100 square feet, Hoffman 1,297 square feet, and Barksdale 1,416 square feet. The Taxpayer added the finished area of the basements with the main floor living and compared the total square foot cost of the dwellings as follows: Hall \$234,551/2,790 SF = \$84.06, Hoffman \$289,848/3,134 SF = \$92.49, Barksdale \$294,497/3,234 S F= \$91.06 and the Subject Property \$247,400 /1,878 SF = \$131.74.
19. The correct procedure is to use above grade square footage. The definition of gross living area is the “[t]otal area of finished, above-grade residential space, calculated by measuring the outside perimeter of the structure and includes only finished, habitable, above-grade living space. (Finished basements and attic areas are not generally included in the total gross living area.)”¹⁸
20. The Commission notes that after an adjustment to the Taxpayer’s calculations using the correct gross living area, the per square foot values of the comparable properties are greater than the Subject Property.¹⁹

¹³ *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).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ Appraisal Institute, *The Appraisal of Real Estate*, at 237 (13th ed. 2008).

¹⁹ Hall \$234,551/1,690 SF = \$138.79, Hoffman \$289,848/1,737 SF = \$166.87, and Barksdale \$294,497/1,818 = \$161.99.

21. Additionally, the Taxpayer's argument may be summarized as an assertion that the Subject Property was not equalized. The Taxpayer supported this assertion by comparing the per square foot assessed value of alleged comparable properties and the Subject Property.
22. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the Subject Property and comparable property.²⁰ This requires assertions indicating the actual value of the Subject Property and comparable properties, and then analysis of the proportion of the actual value of comparable properties and the Subject Property assessed for ad valorem tax purposes (i.e. an assertion that comparable properties were assessed at 90% of actual value while the Subject Property was assessed at 100% of actual value).
23. Comparison of the assessed per square values of properties alone is insufficient to meet the standard for equalization as the issue is whether or not there is a difference between the portion of the Subject Property's actual value taxed and the portions of comparable properties' actual value taxed.
24. Additionally, assessing substantially similar properties at materially different levels violates the principle of equalization.²¹
25. In the current case, the Taxpayer's alleged comparable properties vary in amount of basement finish. The Commission finds that the alleged comparable properties and the Subject Property are not substantially similar.
26. The Taxpayer stated that he had a fee appraisal completed for refinance purposes in approximately June 2011. He did not provide the Commission a copy of the appraisal or provide the appraiser's testimony for the Commission to review.
27. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
28. The Taxpayer has not 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 affirmed.

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.
2. The Taxable value of the Subject Property for tax year 2012 is:

²⁰ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

²¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

Land	\$ 42,000
<u>Improvements</u>	<u>\$247,400</u>
Total	\$289,400

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 2012.
7. This Decision and Order is effective on December 6, 2013.

Signed and Sealed: December 6, 2013

Nancy J. Salmon, Commissioner