

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Linda M. Burton,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 762 & 12R 763

Decision Affirming County Board of
Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property consists of two adjacent residential parcels. The parcel that is the subject of appeal in case 12R 762, which is improved with a residence and a commercial office building, is located at 5102 Yew Lane, Omaha, Douglas County, Nebraska, with a legal description of: LANDS SEC-TWN-RGE 06-16-13 E 131.99 W 461.99 N 660 Ft SW ¼ NE ¼ 2 AC. The parcel that is the subject of appeal in case 12R 763, which is improved with an outbuilding, is located in Omaha, Douglas County, Nebraska, with a legal description of: LANDS SEC-TWN-RGE 06-16-13 E 858.01 N 660 FT SW ¼ NE ¼ 13 AC.
2. The Douglas County Assessor assessed the Subject Property in case 12R 762 at \$282,300 for tax year 2012.
3. The Douglas County Assessor assessed the Subject Property in case 12R 763 at \$183,600 for tax year 2012.
4. David R Burton, Linda M. Burton’s spouse, was present at the hearing (herein referred to as the “Taxpayer”). The Taxpayer protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”). In Case No. 12R-762, the Taxpayer requested an assessed value of \$236,265 (Land: \$32,500; Improvements: \$203,265). In Case No. 12R-763, the Taxpayer requested an assessed value of \$139,600.
5. The County Board determined that the assessed value of the Subject Property in case 12R 762 was \$282,300 for tax year 2012.
6. The County Board determined that the assessed value of the Subject Property in case 12R 763 was \$183,600 for tax year 2012.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
8. A Single Commissioner hearing was held on October 21, 2013, 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.
9. Larry Thomsen, an employee of the Douglas County Assessor’s Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

10. The Taxpayer asserted that the County Board overvalued the Subject Property due to insufficient consideration of the following factors: (1) the sale of an adjacent parcel that sold for \$155,000 in an estate proceeding in December 2010 (the Taxpayer submitted information from PropertyShark.com for this parcel); (2) the sale of a nearby parcel that sold for \$180,000 in 2010 or 2011 (the Taxpayer did not submit documentation for this parcel); and (3) the 2008 economic crisis (in support of this assertion, the Taxpayer submitted several national and local newspaper articles).
11. The Taxpayer also submitted photos concerning the 13-acre parcel subject to appeal in case 12R 763. The Taxpayer asserted that the photos demonstrate that a portion of the 13-acre parcel should be designated as wasteland because that portion of the Subject Property was designated as a dump site by the City of Omaha several years ago.
12. The Taxpayer asserted that these documents indicated that the Subject Property was not equalized with similar properties, and that the assessed value exceeded the Subject Property's actual value.
13. The County Board provided the Commission with Assessment Reports for each Subject Property parcel. Each Assessment Report contains the Property Record File for the respective parcel subject to appeal and three alleged comparable properties.¹
14. The County Assessor valued the Subject Property in case 12R 762 using a sales approach for the land and residence, and an income approach for the commercial office.²
15. The County Assessor valued the Subject Property in case 12R 763 using a sales approach for the land and a cost approach for the outbuilding.³
16. The County's representative asserted that the \$155,000 sale of the parcel adjacent to the Subject Property may not have involved an arm's length transaction because it may have occurred in an estate proceeding.

STANDARD OF REVIEW

17. The Commission's review of the determination of the County Board of Equalization is de novo.⁴ "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."⁵
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."⁶ 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

¹ See, Assessment Reports.

² See, Assessment Report for case 12R 762.

³ See, Assessment Report for case 12R 763.

⁴ 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).

⁵ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

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.”⁷

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.⁸
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

GENERAL VALUATION LAW

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.¹⁰
22. “Actual value, market value, and fair market value mean exactly the same thing.”¹¹
23. 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.¹²
24. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹³
25. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁴
26. 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.¹⁵

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2011 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

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

¹² Neb. Rev. Stat. §77-131 (Reissue 2009).

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

¹⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2009).

VALUATION ANALYSIS

27. As noted above, in support of his assertion that the County overvalued the Subject Property, the Taxpayer references two adjacent properties near the Subject Property that were subject to recent sale transactions.
28. The Taxpayer's approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
29. The sales comparison approach involves a defined systematic procedure that requires, among other steps, the following: "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences."¹⁶
30. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁷ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371.¹⁸
31. The Taxpayer did not provide analysis regarding adjustments based on the elements of comparison referenced above to determine whether the alleged comparable properties were truly comparable. Therefore, the Commission finds that the Taxpayer's sales comparison approach does not constitute sufficient clear and convincing evidence that the County Board's determinations for tax year 2012 were unreasonable or arbitrary.
32. The Commission notes that guidance for purposes of applying the sales comparison approach is widely available. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.
33. The Commission also 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.*

34. Further, with respect to the Taxpayer's concern regarding insufficient consideration of the economic crisis by the County, general guidance in this regard in the mass appraisal

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301-302.

¹⁷ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at p. 141.

¹⁸ Neb. Rev. Stat. §77-1371 (Reissue 2009).

context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.¹⁹ For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.²⁰ Additionally, in addressing mass appraisal techniques such as the models used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**²¹

35. The New Jersey Tax Court stated as follows regarding consideration of “current market conditions” in a 2013 opinion that reduced the assessed value of the Borgata casino from \$2.26 billion to \$880 million in tax year 2009 and to \$870 million in tax year 2010 due to the adverse impact of the national economic crisis and increased gaming competition (the \$2.26 billion assessment stemmed from a reappraisal for tax year 2008):

The national economy began to soften in late 2007, primarily due to the subprime housing crisis. By October 1, 2008, the economy suffered a significant downturn triggered by the collapse of the mortgage markets and the failure of Bear Stearns and Lehman Brothers. The government-sanctioned bailout of Bear Stearns as a banking institution “too big to fail” set off alarms concerning the stability of the American banking system. The mid-September 2008 collapse of Lehman Brothers led to a sharp drop-off in the stock market and the beginning of the worst recession since the Great Depression. . . .

By October 1, 2009, the national economic condition had further deteriorated. According to one expert who testified at trial “as of October 1, 2009, the macro economy had entered into what many commentators termed a ‘New Normal,’ meaning that the developed nations would enter into a prolonged period of low growth, high unemployment and a need for de-leveraging. This would add to the uncertainty surrounding the gaming industry in general and in Atlantic City specifically, as of the valuation date.” Unemployment rates started to increase significantly in 2008 and were still rising as of September 2009. This fact is significant because low unemployment rates are indicative of increased consumer spending on such discretionary items as gaming and entertainment. The perception that the nation’s economic trouble was not a transitory downturn, but a

¹⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

²⁰ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.²²

36. The Illinois Court of Appeal stated as follows regarding consideration of “current market conditions” in a 2012 opinion affirming a lower court’s approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

Our courts today face a similar situation as that faced by the court in [1937] *Levy* during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.²³

37. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.²⁴
38. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. The Taxpayer provided several articles in support of his assertion that the County overvalued the Subject Property due to insufficient consideration of the economic crisis.
39. The County’s Assessment Reports indicate that the assessed value of the Subject Property increased significantly from 2006 to 2012. The Taxpayer’s documentation raises concern regarding the validity of the County’s mass appraisal model for purposes of determining the actual value of the Subject Property for tax year 2012. The Taxpayer did not, however, provide sufficient documentation in the form of a fee appraisal or Property Record Profiles of sold parcels in the Subject Property’s market area to support the conclusions reached in the above-noted articles. Thus, the Commission is unable to find that the County’s models are unreasonable or arbitrary.
40. The Commission further finds that the Taxpayer did not provide sufficient clear and convincing evidence to quantify the actual value impact regarding the City of Omaha’s designation of at least a portion of the parcel in case 12R 763 as a dump site several years ago.

²² *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at pgs. 1- 2, 8 - 9 (New Jersey Tax Court 2013).

²³ *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

²⁴ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

GENERAL EQUALIZATION LAW

41. “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.”²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ 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.²⁷
42. 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.²⁸
43. 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.²⁹ 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.³⁰
44. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³¹ 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].”³² “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³³
45. “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.”³⁴

EQUALIZATION ANALYSIS

46. For equalization analysis purposes, the Taxpayer submitted information from PropertyShark.com for an adjacent parcel that sold for \$155,000 in an estate proceeding. The Taxpayer also provided listing information for properties in the Ponca Hills area where the Subject Property is located, and he verbally referenced the sale of a nearby parcel for approximately \$180,000.
47. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁵ or (2) a comparison of

²⁵ *Neb. Const.*, Art. VIII, §1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁷ *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).

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

²⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁰ *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).

³¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Id.* at 673, 94 N.W.2d at 50.

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

³⁵ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

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.³⁶

48. The Commission is unable to properly evaluate similarity because Property Record Profiles were not submitted for the properties offered by the Taxpayer for consideration.
49. 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.

CONCLUSION

50. 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 for tax year 2012.
51. The Taxpayer has not adduced sufficient, clear and convincing evidence that the 2012 tax year determinations of the County Board are unreasonable or arbitrary, and that decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 are affirmed.
2. The taxable value of the Subject Property for tax year 2012 in 12R-762 is:

Land	\$ 62,500
Improvements	\$219,800
Total	\$282,300

3. The taxable value of the Subject Property for tax year 2012 in 12R-763 is:

Land	\$162,500
Improvements	\$ 21,100
Total	\$183,600

³⁶ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax year 2012.
8. This order is effective on August 4, 2014.

Signed and Sealed: August 4, 2014.

Thomas D. Freimuth, Commissioner