

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gordon H. Parry,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1182

Decision Affirming County Board of
Equalization

GENERAL BACKGROUND AND PROCEDURAL HISTORY

1. The Subject Property (herein referred to as the “Subject Property”) is a residential parcel located at 13411 Bedford Avenue, Omaha, Nebraska. A legal description of the Subject Property is contained in the Case File.
2. The Douglas County Assessor assessed the Subject Property at \$689,900 for tax year 2012.¹
3. Gordon H. Parry (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 an assessed value of \$560,000 for tax year 2012.²
4. The County Board determined that the assessed value of the Subject Property was \$620,000 for tax year 2012.³
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 August 30, 2013, at the Omaha State Office Bldg., 1313 Farnam, Rm 227, Omaha, NE, before Commissioner Thomas D. Freimuth.
7. Gordon H. Parry was present at the hearing.
8. Brian Grimm, an assessor with the Douglas County Assessor’s Office, was present for the County Board.

STANDARD OF REVIEW

9. 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
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

¹ See, Case File.

² See, Case File.

³ See, Case File.

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).

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 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

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.⁸
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹
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.¹⁰

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer asserted that the assessed value of the Subject Property should be decreased by 12% to \$560,000. In support of this assertion, the Taxpayer provided the Commission with documentation regarding the assessment history of homes in the Eagle Run West subdivision from 2007 through 2012. The Eagle Run West subdivision surrounds Champions Golf Course, and the Subject Property is located across the street from homes situated on the golf venue. The Taxpayer chose the period 2007 through 2012 for analysis purposes to illustrate the impact of the 2008 economic crisis and its aftermath.
15. The Taxpayer’s assessment history documentation provides as follows: (1) 97 homes analyzed in Eagle Run West in all value ranges decreased on average 10% from 2011 to 2012 in terms of assessment valuation and 11% on average compared to 2007 assessments; (2) 16 homes in the subdivision with 2012 valuations between 600,000 and \$700,000 decreased on average 11% compared to 2011 assessments and 13% compared to 2007 valuations; (3) six homes adjoining and across the street from the Subject Property decreased on average 11% compared to 2011 and 2007 assessments; and (4) six homes in the cul-de-sac immediately across from the Subject Property decreased on average 12% compared to 2011 assessment averages and 10.5% compared to 2007 assessments averages.
16. In further support of his assertion that the Subject Property was overvalued by 12% for tax year 2012, the Taxpayer submitted a research report entitled “Single-Family Residential Housing Prices Omaha Metro Area (2000 – 2011).” This research report, which is dated February 15, 2012, is authored by Dr. Steven Shultz, a Real Estate & Land Use Economics Professor with the University of Nebraska at Omaha’s College Business

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

⁷ *Id.*

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

Administration. Dr. Shultz’s study concludes that “from the peak of the housing market in 2006 through 2011, housing prices decreased by 12%.”

17. 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.
18. The County Board provided the Commission with an Assessment Report which contains the Property Record Files for the Subject Property and three alleged comparable properties.¹¹ The Assessment Report states that the County’s three alleged comparable sales are all situated on Champions Golf Course whereas subject property is across the street therefrom.¹²
19. The County Assessor valued the Subject Property using a sales comparison approach and mass appraisal model.¹³
20. The County Board asserted that many of the Taxpayer’s properties submitted for analysis were not truly comparable to the Subject Property because they varied in size, style, and age. The County Board’s representative also stated that he otherwise could not provide input regarding the properties submitted for analysis because Property Record Files were not submitted.
21. Following is the Subject Property’s assessment history contained in the County’s Assessment Report at page 12:¹⁴

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	REASON
2012	8/7/2012	80000	540000	\$620,000	Board of Equalization
2012	3/9/2012	80000	609900	\$689,900	Reappraisal by County Assessor
2008	8/7/2008	80000	570000	\$650,000	Board of Equalization
2008	3/10/2008	80000	610000	\$690,000	Inspection Review
2007	7/30/2007	80000	556000	\$636,000	Board of Equalization
2007	3/13/2007	80000	761300	\$841,300	Reappraisal by County Assessor
2003	3/14/2003	80000	576200	\$656,200	Reappraisal by County Assessor
2001	3/16/2001	52500	606700	\$659,200	MVU (acronym unknown)
2000	7/5/2000	52500	587500	\$640,000	Board of Equalization
2000	3/12/2000	52500	652100	\$704,600	MVU (acronym unknown)

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.¹⁵

¹¹ See, Assessment Report.

¹² Assessment Report, pg. 7.

¹³ See, Assessment Report, pg. 10.

¹⁴ The Taxpayer indicated that the assessed value of the Subject Property increased 8% from 2007 to 2012, while the average in the subdivision decreased 12%. It appears this 8% amount is derived from a comparison of the County Assessor’s \$689,900 reappraisal value in tax year 2012 compared to the County Board’s \$636,000 determination for tax year 2007. As the assessment history chart indicates, however, the County Board’s \$620,000 determination for tax year 2012 rejected the County Assessor’s \$689,900 reappraisal value. Thus, the Subject Property’s 2012 assessment is lower than its 2007 assessment.

23. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶
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.¹⁷
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹
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 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.²⁰

VALUATION ANALYSIS

28. As the assessment history chart above indicates, the County Board’s \$620,000 determination for tax year 2012 did not rely upon the County Assessor’s \$689,900 opinion of the actual value of the Subject Property that was determined by a sales comparison approach and a mass appraisal model.²¹
29. The Commission notes that the Taxpayer’s did not provide a fee appraisal of the Subject Property, nor did the Taxpayer provide analysis meeting the requirements of Nebraska Statutes section 77-112 noted above, which provides that actual value can be determined using the sales comparison approach, the cost approach, and the income approach. While the Taxpayer’s documentation is compelling, the use of averaged assessed values does not meet the requirements of any of these approaches. The Commission is also unable to find that the Taxpayer’s documentation constitutes a professionally accepted mass appraisal method for purposes of showing that the County Board’s \$620,000 determination for tax year 2012, which rejected the County Assessor’s \$689,900 reappraisal value, was arbitrary or unreasonable.
30. While it is this Commissioner’s understanding that an appraisal offered by a non-licensed individual has rarely if ever constituted clear and convincing evidence that the County

¹⁵ 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).

¹⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. § 77-112 (Reissue 2009).

²¹ See, Assessment Report.

Board's valuation determination was arbitrary or unreasonable, the Taxpayer's efforts to produce useful information are noticed by this Commissioner. It is also this Commissioner's view that a viable appraisal can be produced by a non-licensed property owner for ad valorem tax purposes in Nebraska.

31. Guidance for purposes of applying the sales comparison approach and other valuation methods is available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. 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.
32. 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 context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.²² 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.²³ Additionally, in addressing mass appraisal techniques such as the model 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.**²⁴

33. 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

²² *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

²³ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²⁴ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

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 long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.²⁵

34. 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.²⁶

35. 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.²⁷

²⁵ *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).

²⁶ *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).

²⁷ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

36. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States, including many markets in Nebraska.
37. The Taxpayer's documentation is compelling and raises significant concern regarding the validity of the County Assessor's mass appraisal model valuation in the amount of \$689,900 for 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 a finding that the County Board's reduction of the County Assessor's model valuation from \$689,900 to \$620,000 for tax year 2012 is unreasonable or arbitrary.

GENERAL EQUALIZATION LAW

38. "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."²⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁹ 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.³⁰
39. 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.³¹
40. 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.³² 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.³³
41. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁴ 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]."³⁵ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."³⁶

²⁸ *Neb. Const.*, Art. VIII, §1.

²⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁰ *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).

³¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³³ *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).

³⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁶ *Id.* at 673, 94 N.W.2d at 50.

42. “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.”³⁷

EQUALIZATION ANALYSIS

43. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁸ 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.³⁹
44. 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.

45. Because Property Record Files 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 finds that the Taxpayer’s assertions that the Subject Property was not equalized with other real property does not constitute clear and convincing evidence that the County Board’s determination for tax year 2012 was arbitrary or unreasonable, or that the assessed value of the Subject Property was grossly excessive.

CONCLUSION

46. 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.
47. The Taxpayer has not produced clear and convincing evidence that the Subject Property’s assessed value when compared with similar properties is grossly excessive and is the result of systematic will or failure of a plain legal duty.
48. 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:

³⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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:

Land	\$ 80,000
<u>Improvements</u>	<u>\$540,000</u>
Total	\$620,000

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 August 4, 2014.

Signed and Sealed: August 4, 2014

Thomas D. Freimuth, Commissioner