

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joseph K. Meusey,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 11R 457 & 12R 141

Decision Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 2,722 square foot home located at 2643 South 95th Circle, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor assessed the Subject Property at \$514,600 for tax years 2011 and 435,600 for tax year 2012.
3. Joseph K. Meusey (herein referred to as the “Taxpayer”) protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$355,000 for tax years 2011 and 2012.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth, on May 23, 2013.
7. Joseph K. Meusey, the Taxpayer, was present at the hearing.
8. Larry Thomsen, an employee of the Douglas County Assessor’s Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The County Board submitted Assessment Reports for tax years 2011 and 2012 at the hearing. The Property Profile contained in the Assessment Reports for the Subject Property indicates that the County Board’s \$355,000 determinations for tax years 2011 and 2012 includes \$90,000 for land and \$265,000 for the improvement component. The Commission notes that the Assessment Reports indicate that the County Board’s determination for tax years 2004 through 2009 amounted to \$514,600 (land: \$90,000; improvement: \$424,600). The Property Profile also indicates that the Taxpayer purchased the Subject Property for \$290,000 in 1991, and that it has not been updated in at least 25 years.
10. The Assessment Report’s one-page “PVAL” document indicates that the land component of Subject Property was increased in 2004 from \$43,200 to \$90,000 pursuant to a reappraisal by the County Assessor.
11. The Assessment Reports indicate that the County Assessor’s notice values for tax years 2011 and 2012 attributable to the Subject Property’s improvement component (2011: \$424,600; 2012: 345,600) were based on a sales comparison approach mass appraisal

model derived from market area arm's-length sales and multiple regression analysis.¹ Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.² The Assessment Reports contain a document entitled "Market Calculation Detail" 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 years 2011 and 2012.³

12. Larry Thomsen, an employee of the Douglas County Assessor's Office, indicated that sales in the "two-year look-back period" prior to each tax year are reviewed for purposes of constructing the County's model. Thus, for tax year 2011, the County's model is derived from market area sales that occurred from July 1, 2008 to June 30, 2010, and the window is one year later for tax year 2012.
13. The County's Assessment Reports indicate that the County Board's \$355,000 determination for tax years 2011 and 2012 was not based on the County Assessor's mass appraisal model for each year. The basis of the County Board's decision is unknown.

STANDARD OF REVIEW

14. 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
15. 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 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

¹ Page 10 of the 2012 Assessment Report indicates that the County Assessor's model value for that year decreased in comparison to 2011 in part based on an inspection, which lowered the Subject Property's condition to average.

² *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

³ The Assessment Report contains references to the cost approach, but based on a review of all of the statements and documents submitted at the hearing, the Commission finds that the County relied on its sales comparison approach model to value the Subject Property's improvement component.

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).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

GENERAL VALUATION LAW

18. 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
19. “Actual value, market value, and fair market value mean exactly the same thing.”¹¹
20. 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
21. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹³
22. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁴
23. 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

VALUATION ANALYSIS

24. The Taxpayer asserted that the County Board overvalued the Subject Property. In support of this assertion, the Taxpayer submitted documentation that included analysis of the sales and assessment history of three comparables near the Subject Property. This documentation included Property Profiles for each of the comparables. The Taxpayer did not submit a fee appraisal of the Subject Property at the hearing before the Commission.
25. Based on this analysis, which included concern regarding the County’s consideration of the economic crisis, the Taxpayer asserted that the actual value of the Subject Property amounted to \$267,000 for tax years 2011 and 2012.
26. The Taxpayer’s opinion of value relies in part on the use of assessed values of properties near the Subject Property. This approach is not a commonly accepted mass appraisal

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).

technique for determining the actual value of real property under Nebraska Statutes section 77-112.

27. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's use of assessed values of properties near the Subject Property is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's \$267,000 opinion of value to the extent it relies on the use of assessed values of comparables.
28. The Taxpayer's opinion of value also relies in part on the use of sales of comparable properties.
29. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar 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, which provides that "[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value."¹⁸
31. The Taxpayer's \$267,000 opinion of value does not provide analysis regarding adjustments based on the elements of comparison referenced above. Thus, the Commission is unable to place significant weight on the Taxpayer's sales comparison valuation. The Commission notes, however, that while a fee appraisal of the Subject Property was not presented at the hearing, a certified appraiser would derive assistance from the detailed information analyzed by the Taxpayer.
32. Guidance for purposes of applying the sales comparison approach is widely 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.

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 141.

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

33. 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.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 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.**²¹

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.²²

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.²³
36. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States. Nonetheless, the Commission

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).

²² *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).

²³ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

finds that the Taxpayer did not provide sufficient clear and convincing evidence to quantify the impact of the economic crisis on the actual value of the Subject Property.

GENERAL EQUALIZATION LAW

37. “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.”²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶
38. 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.²⁷
39. 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.²⁸ 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.²⁹
40. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁰ 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].”³¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³²
41. “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.”³³

EQUALIZATION ANALYSIS

42. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of three comparables. In support of this assertion, the Taxpayer submitted 2011 and 2012 Property Profiles for these properties, together with a map indicating the location thereof.

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

²⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

³³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

43. The County's representative stated that the property located at 9344 West Center Road submitted by the Taxpayer was most comparable to the Subject Property. The County's representative also stated that the County Board's assessment determinations for the 9344 West Center Road property for tax years 2011 and 2012 raised concern regarding equalization with the Subject Property.
44. The Commission notes that the Property Profile for the 9344 West Center Road indicates that it was improved with a 2,772 square foot home in 1978, while the Property Profile for the Subject Property indicates that it was improved with a 2,722 residence in 1968. The Commission also notes that the Property Profiles for the Subject Property and the 9344 West Center Road parcel rate both as "Good" in terms of quality and "Good" in terms of condition.³⁴
45. Based on a review of the Property Profiles, maps and testimony relating to the Subject Property and the 9344 West Center Road property, the Commission finds that the parcels are similar in terms of location, appearance (Ranch), age, quality and condition.³⁵
46. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁶ 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.³⁷
47. The Commission finds that the 9344 West Center Road parcel submitted by the Taxpayer is similarly situated or comparable to the Subject Property for equalization analysis purposes. It follows that, by failing to equalize the Subject Property with the parcel at 9344 West Center Road on a per square foot valuation basis, the County Board's determinations for tax years 2011 and 2012 were unreasonable or arbitrary because they treat similarly situated properties at materially different levels.³⁸
48. In the case where it is determined that the decisions of County Board were unreasonable or arbitrary from an equalization standpoint, the Commission must review the evidence and adopt the most reasonable per square foot value presented.³⁹ The assessed valuation of the 9344 West Center Road comparable for tax year 2011 is \$94 per square foot (\$260,600 ÷ 2,772 sq. ft.) and \$102 per square foot for tax year 2012 (\$283,000 ÷ 2,772 sq. ft.). Therefore, the Commission finds that the rounded equalization value of the

³⁴ As indicated previously, page 10 of the County's 2012 Assessment Report indicates that the County Assessor's model value for that year decreased in comparison to 2011 in part based on an inspection in August of 2012, which lowered the Subject Property's condition from Good to Average. The Commission notes that the 2011 Property Profile for the Subject Property rates quality as for Very Good, while the 2012 Property Profile rates quality as Good. The Commission also notes that the Very Good quality rating for 2011 is contained on a document dated June 30, 2011, so this rating preceded the County's inspection in August 2012.

³⁵ The Subject Property's improvement component (2,722 sq. ft.) was built in 1968, while the 9344 W Center property was improved in 1978. The Commission also notes that the 9344 W Center property sold for \$220,000 in June 2005 in a foreclosure transaction.

³⁶ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁷ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999); *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 - 529 (2008) ("By adjudicating tax protests in greatly disparate amounts . . . the Board failed to fulfill its 'plain duty' to equalize property valuations.") The one-page "PVAL" document contained in the 2012 Property Profile for the 9344 W Center Road property indicates that the County Board reduced the County Assessor's \$370,300 model value to \$283,000. The County Board, however, failed to equalize the Subject Property with this similarly situated property.

³⁹ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999). See also, *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

Subject Property for tax year 2011 is \$255,900 (\$94 x 2,722 sq. ft.) and \$277,600 for tax year 2012 (\$102 x 2,722 sq. ft.).

CONCLUSION

- 49. 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.
- 50. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

- 1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2011 and 2012 are vacated and reversed.
- 2. That the taxable value of the Subject Property for tax years 2011 is:

Land	\$ 90,000
Improvements	\$165,900
Total	\$255,900

- 3. That the taxable value of the Subject Property for tax years 2012 is:

Land	\$ 90,000
Improvements	\$187,600
Total	\$277,600

- 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 years 2011 and 2012.
- 8. This order is effective on January 17, 2014.

Signed and Sealed: January 17, 2014.

Thomas D. Freimuth, Commissioner

