

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Carol A. Jensen,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 044

Decision and Order Affirming the
Determination of the Douglas
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 2402 S 47 Street, Omaha, Nebraska, with a legal description of: LANDS SEC-TWN-RGE 29-15-13 E 136 W 305 N 66 S 132 FT T L 7.¹
2. The Douglas County Assessor assessed the Subject Property at \$155,500 for tax year 2012.²
3. Carol A. Jensen (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).³
4. The County Board determined that the assessed value of the Subject Property was \$155,500 for tax year 2012.⁴
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 September 5, 2013, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Carol A. Jensen was present at the hearing.
8. Larry Thomsen and Kevin Corcoran, assessors with the Douglas County Assessor’s Office, were 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.⁵ “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, Assessment Report, pgs. 2-3.

² See, Case File.

³ See, Case File.

⁴ See, Case File.

⁵ 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.”⁶

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.”⁷ 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.”⁸
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.⁹
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰
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.¹¹

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer provided the Commission with documentation regarding eight properties that she asserted were comparable to the Subject Property. This documentation includes screenshots from the County Assessor’s website and listing service information.
15. 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.
16. The Taxpayer asserted that the Dragon comparable was most comparable to the Subject Property, located directly across the street from the Subject Property, and assessed at less per square foot than the Subject Property.
17. The Taxpayer also provided the Commission with a printout of sales of properties within the Subject Property’s neighborhood entitled “Subdivision Sales Results.” The Taxpayer contended that the list of sales indicates that the Subject Property is overvalued for tax year 2012.¹²

⁶ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

⁸ *Id.*

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² See, Subdivision Sales Results.

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.¹³
19. The County Assessor valued the Subject Property using a sales comparison approach and mass appraisal model.¹⁴
20. The County Board asserted that many of the Taxpayer's alleged comparable properties were not truly comparable to the Subject Property because they varied in size, style, and age.

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.¹⁵
22. "Actual value, market value, and fair market value mean exactly the same thing."¹⁶
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.¹⁷
24. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸
25. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹
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

¹³ See, Assessment Report.

¹⁴ See, Assessment Report, pg. 10.

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).

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

27. The County Board relied upon the County Assessor's opinion of the actual value of the Subject Property as determined by a sales comparison approach and a mass appraisal model.²¹
28. The Commission notes that the Taxpayer's Subdivision Sales Results includes properties with varying ages, designs, conditions, and quality.
29. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.²² If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.²³
30. The Commission finds that without adjustments the Taxpayer's Subdivision Sales Results does not constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.

GENERAL EQUALIZATION LAW

31. "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
32. 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
33. 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

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

²¹ See, Assessment Report.

²² See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

²³ See, Appraisal Institute, *The Appraisal of Real Estate*, at 297 (13th ed. 2008) (requiring adjustments for comparable sales to account for differences with the Subject Property).

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).

proportionately, even though the result may be that it is assessed at less than the actual value.²⁹

34. 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
35. “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

36. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁴ 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.³⁵
37. A review of the Taxpayer’s eight properties submitted for consideration indicates that they are significantly different than the Subject Property. The style, age, size, quality, and condition of the properties vary significantly.
38. Comparable properties share the physical characteristics.³⁶
39. Specifically concerning the Dragon Comparable that the Taxpayer asserted was most similar to the Subject Property, the Commission notes the following differences: (1) the Subject Property has a greater Gross Living Area (“GLA”); (2) the Subject Property has a sprinkler system and a wood deck while the Dragon Comparable does not; (3) the Subject Property has a larger attached garage and a larger detached garage than the Dragon Comparable; (4) the Subject Property has an extra half-bath in the basement that the Dragon Comparable does not; and (5) the Dragon Comparable has a chain link fence while the Subject Property does not.

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).

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

³⁵ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁶ See generally, Neb. Rev. Stat. 77-1371 (Reissue 2009) (defining comparable sale). See generally also, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

40. The Commission finds that these differences indicate that the Subject Property and the alleged comparable properties are not substantially similar or comparable.
41. 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.*

42. In part because Property Record Files were not submitted by the Taxpayer for the eight 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

43. 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.
44. 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.
45. 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:

Land	\$7,500
<u>Improvements</u>	<u>\$148,000</u>
Total	\$155,500

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 July 23, 2014.

Signed and Sealed: July 23, 2014

Thomas D. Freimuth, Commissioner