

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Emmet L. Steffes,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 145

Decision Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 2,008 square foot residence located at 6870 Bennington Road, Omaha, NE, Douglas County, Nebraska.
2. The Douglas County Assessor assessed the Subject Property at \$329,930 for tax year 2012.
3. Emmett L. Steffes (herein referred to as the “Taxpayer”) protested this value 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 \$305,230 for tax year 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 Omaha State Office Bldg., 1313 Farnam, Omaha, Nebraska, before Commissioner Thomas D. Freimuth, on August 28, 2013.
7. Emmett L. Steffes, the Taxpayer, was present at the hearing.
8. Kevin Corcoran and Stan Mlotek, employees of the Douglas County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File contained in the Assessment Report submitted by the County for the Subject Property indicates that the County Board’s \$305,230 determination for tax year 2012 includes \$47,130 for land and \$258,100 for the improvement component.
10. The Assessment Report indicates that the County Assessor’s \$329,930 (Land: \$47,130; Improvement: \$282,800) notice value for tax year 2012 attributable to the Subject Property’s improvement component is 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 Report contains a document entitled “Market Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement component.³

¹ Assessment Report, pg. 11.

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

³ Assessment Report, pgs. 17 - 18.

11. The Assessment Report contains “Account Notes,” which indicate that the County Assessor’s Office recommended a lowering of the improvement component from \$282,800 to \$258,100 after conversations with the Taxpayer in June of 2012.⁴ The County Board adopted this \$258,100 improvement component recommendation for tax year 2012.⁵
12. The Assessment Report contains the following property valuation history at page 19:

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2013	3/9/2013	56000	258100	314100	LR (Assume Land Review)
2012	8/7/2012	47130	258100	305230	Board of Equalization
2012	3/9/2012	47130	282800	329930	Reappraisal
2011	6/8/2012	44720	176830	221550	TERC
2011	8/9/2011	44720	266300	311020	Board of Equalization
2011	3/13/2011	44720	266300	311020	Reappraisal
2009	11/3/2010	31440	163300	194740	TERC
2009	8/12/2009	31440	163300	194740	Board of Equalization
2009	3/9/2009	31440	163300	194740	Reappraisal

13. The Taxpayer’s dispute is limited to the improvement value of the Subject Property. The Taxpayer contended that it was unreasonable for the Subject Property’s improvement component to increase \$81,300 from tax year 2011 to tax year 2012.⁶
14. The Taxpayer provided Property Record Files and screenshots from the Douglas County Assessor’s website of seven alleged comparable properties. The Taxpayer derived an opinion of value in the amount of \$176,704 for the Subject Property’s improvement component by multiplying the 2,008 square foot gross living area by \$88 per square foot, which is an average of the per square foot gross living area of the seven properties submitted for consideration (the Taxpayer derived the \$88 per square foot average by using the assessed per square foot improvement values of some alleged comparable properties and the per square foot improvement sale prices of other parcels).⁷
15. The Assessment Report includes the Property Record File for the Subject Property and the County Assessor’s alleged comparable properties. The County Assessor asserted that the Taxpayer’s alleged comparable properties are not truly comparable to the Subject Property.⁸

STANDARD OF REVIEW

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

⁴ Assessment Report, pg. 13 (6/6/2012 Account Note).

⁵ Assessment Report, pg. 19.

⁶ See, Taxpayer’s Protest Submission.

⁷ See, Hearing Notes.

⁸ See, Hearing Notes

⁹ 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.”¹⁰

17. 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.”¹¹ 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.”¹²
18. 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.¹³
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁴

GENERAL VALUATION LAW

20. 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
21. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶
22. 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
23. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹
25. 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

¹⁰ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

¹¹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹² *Id.*

¹³ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

¹⁴ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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).

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

26. The Taxpayer's opinion of value based on the use of assessed values and sales prices of alleged comparable properties can best be described as an attempted sales comparison approach. In the sales comparison approach an opinion of value is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property.²¹ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.²² This process requires an analysis of sales prices, not assessed values.²³ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.²⁴
27. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.²⁵ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²⁶ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
28. An examination of the Taxpayer's alleged comparable properties indicates that the properties have several differences in terms of size, style, and number of improvements present on the respective parcels.²⁷ Additionally, the Taxpayer did not use sales prices exclusively, but instead relied in part upon an examination of assessed values.²⁸ The Taxpayer's approach for determining the actual value of the Subject Property's improvement component does not meet the requirements of the sales comparison approach.²⁹
29. The Taxpayer's opinion of value was determined by averaging the assessed values of other properties and the portion of sales prices deemed attributable to improvements of other property, and then applying the averaged per square foot value to the area of the improvement component situated on the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.³⁰ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
30. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.³¹ Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."³²

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

²¹ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

²² *Id.* at 301-302.

²³ *Id.*

²⁴ *Id.*

²⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁶ *Id.*

²⁷ See, Taxpayer's comparable properties screen shots.

²⁸ See, *Id.*

²⁹ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

³⁰ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

³¹ See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

³² *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

31. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's opinion of value because it is not based on a professionally accepted appraisal approach.
32. The Assessment Report indicates that the County Board adopted the County Assessor's revised opinion of value which was calculated through the sales comparison approach. The sales comparison approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.³³
33. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
34. While the Commission is unable to find that the Taxpayer's sales comparison analysis constitutes clear and convincing evidence that the County Board's determination for tax year 2012 is arbitrary or unreasonable, the Taxpayer's efforts to produce useful information are noticed by this Commissioner. Moreover, even though 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 Board's valuation determination was arbitrary or unreasonable, it is my view that a viable appraisal can be produced by a non-licensed property owner for ad valorem tax purposes in Nebraska.
35. 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.
36. 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.³⁴ 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.³⁵ 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.**³⁶

³³ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

³⁴ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

³⁵ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

³⁶ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

37. 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, similar to the experience of the Taxpayer herein):

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 long-term recalibration of the economy, was hardening among the public and participants in the financial markets as of the second valuation date.³⁷

38. 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

³⁷ *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).

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.³⁸

39. 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.³⁹
40. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States, including some markets in Nebraska.
41. The County’s Assessment Report indicates that the assessed value of the Subject Property increased from \$176,800 in 2008 to \$305,230 in tax year 2012. While this dramatic increase in the aftermath of the economic crisis 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 provide sufficient documentation in the form of a fee appraisal or Property Record Files of sold parcels in the Subject Property’s market area to support a finding that the County’s model is unreasonable or arbitrary.

GENERAL EQUALIZATION LAW

42. “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.”⁴⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴¹ 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.⁴²
43. 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.⁴³
44. 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.⁴⁴ Taxpayers are entitled to have their property assessed uniformly and

³⁸ *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).

³⁹ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

⁴⁰ *Neb. Const.*, Art. VIII, §1.

⁴¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁴² *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).

⁴³ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁴ *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.⁴⁵

45. The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁶ 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].”⁴⁷ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁸
46. “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.”⁴⁹

EQUALIZATION ANALYSIS

47. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁵⁰ 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.⁵¹
48. For equalization analysis purposes, the Taxpayer submitted Property Record Files and screenshots from the Douglas County Assessor’s website for seven parcels.
49. A review of the Property Record Files and screenshots submitted by the Taxpayer indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The size of the improvements, land components, and physical characteristics vary significantly.⁵² A review of the per square foot assessed value is only applicable where properties are substantially similar.
50. The Commission finds that the Taxpayer’s alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
51. 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.

⁴⁵ *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).

⁴⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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

⁴⁸ *Id.* at 673, 94 N.W.2d at 50.

⁴⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵⁰ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁵¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁵² While a review of the Taxpayer’s comparable located at 11108 Larimore indicates that it is similar in part because it is based on the same floor plan as the Subject Property, its Property Record File indicates that its Fair condition rating is two levels below the Subject Property’s Good rating.

CONCLUSION

- 52. 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.
- 53. 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. That the taxable value of the Subject Property for tax year 2012 is:

Land	\$ 47,130
Improvements	\$258,100
Total	\$305,230

- 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 order is denied.
- 5. Each Party is to bear its own costs in this proceeding.
- 6. This decision shall only be applicable to tax year 2012.
- 7. This order is effective on July 9, 2014.

Signed and Sealed: July 9, 2014.

Thomas D. Freimuth, Commissioner