

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Richard J. Marasco,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1188

Decision and Order Affirming the Douglas
County Board of Equalization

GENERAL BACKGROUND AND PROCEDURAL HISTORY

1. The real property subject to appeal (herein referred to as the “Subject Property is a residential parcel located at 16725 Pasadena Plaza, Omaha, NE, with a legal description of: ELSHIRE ACRES LOT 9 BLOCK 0 W 370 FT LOT 8 & IRREG NWSTLY 205 FT LOT 9 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$452,600 for tax year 2012.
3. Richard J. Marasco (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 \$350,288 for tax year 2012.
4. The County Board determined that the assessed value of the Subject Property was \$452,600 for tax year 2012.
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. Richard J. and Lou Ann Marasco were present at the hearing.
8. Brian Grimm and Larry Thomsen, employees of the Douglas County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Taxpayer, a contractor since 1977, asserted that the assessed value of the Subject Property’s improvement component increased when improvement values of alleged comparable properties decreased.
10. The Taxpayer provided a chart of alleged comparable properties with the indicated decreases in assessed improvement value.
11. The Taxpayer provided screen shots of the assessor’s webpage, but did not provide any property records cards for his alleged comparable properties.
12. The Taxpayer further asserted that the assessed value of the improvements located on the Subject Property have never decreased since construction.

13. The Taxpayer argued that it was unreasonable for referees at the County Board hearing to fail to review the averaged assessed value of improvements only.
14. The County Assessor provided an Assessment Report which includes the property record card for the Subject Property, a list of alleged comparable properties, and property record cards for the alleged comparable properties.

STANDARD OF REVIEW

15. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "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."²
16. 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."³ 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."⁴
17. 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.⁵
18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
19. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷

GENERAL EQUALIZATION LAW

20. "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

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

by this Constitution.”⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁹ 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.¹⁰

21. 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.¹¹
22. 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.¹² 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.¹³
23. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹⁴ 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].”¹⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁶
24. “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.”¹⁷

EQUALIZATION ANALYSIS

25. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;¹⁸ 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.¹⁹
26. The Taxpayer generally asserted that the Commission could determine that the Subject Property was not equalized with the alleged comparable properties by comparing the percentage increase of assessed valued values of the Subject Property and the alleged comparable properties. The assessed value for real property may be different from year

⁸ *Neb. Const.*, Art. VIII, §1.

⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁰ *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).

¹¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *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).

¹⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

to year, dependent upon the circumstances.²⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.²¹

27. The Taxpayer's burden is not met by merely showing that the assessed value of the Subject Property has increased. Instead, equalized relief may be based on a comparison of the levels of value of comparable properties and the Subject Property,²² or a comparison of the level of value for other properties, other than agricultural property, and the Subject Property.²³
28. A review of the screen shots and comparable property chart submitted by the Taxpayer indicates that most of the Taxpayer's alleged comparable properties are not truly comparable with the Subject Property. The size of the improvements, land components, and physical characteristics vary greatly. A review of the per square foot assessed value is only applicable where properties are substantially similar.
29. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
30. The County Assessor also provided a list of comparable properties and property record cards for those properties. The property records cards contain the market calculation details of the Subject Property and the alleged comparable properties.
31. It is apparent from these market calculation details that the assessed values of the properties are dependent upon their individual characteristics. The increases in the assessed value of the Subject Property, and the decreases in the assessed value of the alleged comparable properties, are driven by market data. Other than general assertions by the Taxpayer, no evidence was presented to the contrary.
32. 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 years 2012. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to the properties presented for consideration by the Taxpayer.

CONCLUSION

33. 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.
34. The Taxpayer has not produced clear and convincing evidence that the assessed value of the Subject Property is grossly excessive.

²⁰ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

²¹ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

²² See generally, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 588 N.W.2d 190 (1999).

²³ See generally, *Krings v. Garfield County Board of Equalization*, 286 Neb. 352, 835 N.E.2d 750 (2013).

35. 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 \$452,600.
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 June 27, 2014.

Signed and Sealed: June 27, 2014

Thomas D. Freimuth, Commissioner