BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mathew J. Baer, Appellant, v. Douglas County Board of Equalization, Appellee.	Case No: 13R 512 Decision and Order Reversing County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,152 square foot residence located at 4714 North 82nd Street, Omaha, NE, Douglas County, Nebraska.
2. The Douglas County Assessor assessed the Subject Property at $113,200 for tax year 2013.
3. Mathew J. Baer (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 $91,000 for tax year 2013.
4. The County Board determined that the assessed value of the Subject Property was $113,200 for tax year 2013.
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 Nebraska State Office Bldg., Lincoln, Nebraska, before Commissioner Thomas D. Freimuth, on October 3, 2014.
7. Mathew J. Baer, the Taxpayer, was present at the hearing.
8. Larry Thomsen, an assessor with the Douglas County Assessor's Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File (herein "PRF") contained in the Assessment Report submitted by the County for the Subject Property indicates that the Taxpayer purchased the Subject Property for $91,000 on December 2, 2010.
10. The PRF indicates that the County Board's $113,200 determination for tax year 2013 includes $21,000 for land and $92,200 for the improvement component.
11. The Assessment Report indicates that the County Assessor's $113,200 (Land: $21,000; Improvement: $92,200) notice value for tax year 2013 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

[1] Assessment Report, pg. 6.
[2] *Property Assessment Valuation,* 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

Detail" that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property's improvement component.[3]

12. The Assessment Report contains the following Subject Property sales history at page 3:

Sale Date	Sale Price	Deed Type	Book	Page #	Grantor
12/2/2010	$91,000	Warranty Deed	2010	115310	FAIR RICHARD H III
3/15/1999	$94,000	Deed	2116	165	
10/7/1995	$82,000	Deed	2020	581	

13. The Assessment Report contains the following valuation history at page 13:

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2014	8/5/2014	$21,000	$82,700	$103,700	County Board
2013	8/7/2013	$21,000	$92,200	$113,200	County Board
2013	3/9/2013	$21,000	$92,200	$113,200	Reappraisal by County Assessor
2011	8/9/2011	$21,000	$70,000	$91,000	County Board
2008	3/10/2008	$21,000	$102,200	$123,200	Reappraisal by County Assessor
2007	3/13/2007	$21,000	$101,700	$122,700	Inspection by County Assessor
2005	3/19/2005	$21,000	$97,100	$118,100	Land Review by County Assessor
2003	7/2/2003	$12,100	$97,100	$109,200	County Board
2003	3/14/2003	$12,100	$101,700	$113,800	Reappraisal by County Assessor
2001	3/16/2001	$12,100	$83,100	$95,200	MVU (Acronym Unknown)

14. The Taxpayer asserted as follows: (1) the Subject Property is overvalued; and (2) the Subject Property's assessed value is not equalized with comparable properties.
15. The Taxpayer stated that his purchase of the Subject Property was financed by the Federal Housing Administration ("FHA") and the first-time homebuyer tax credit in effect for tax years 2008 through 2010, a federal initiative that supported some real estate values for a period of time in the aftermath of the 2008 economic crisis.
16. The Taxpayer stated that FHA lending rules required the seller of the Subject Property to replace deteriorated windows prior to the closing of the transaction in December 2010. The Taxpayer also stated that these FHA rules required the replacement of two decks attached to the Subject Property's residence prior to the closing of the transaction. The Taxpayer further stated that all of these improvements were completed by the end of 2010, and that the Subject Property has not been improved since that time.
17. The Taxpayer contended that it was unreasonable for the Subject Property's assessment to increase from $91,000 in tax years 2011 and 2012 to $113,200 in tax year 2013, especially considering the assessments of several similar nearby properties.[4]
18. The Taxpayer provided screenshots from the Douglas County Assessor's website of five alleged comparable properties. Three of these properties submitted for consideration

[3] Assessment Report, pg. 12.
[4] See, Taxpayer's Protest Submissions submitted to the County Board in tax years 2013 and 2014.

were submitted by the Taxpayer with his protest to the County Board in 2013, and all five were submitted with his protest to the County Board in 2014.

19. The Assessment Report includes the PRF for the Subject Property and the County Assessor's alleged comparable sale properties.
20. The County Assessor's representative asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.[5]
21. The County Assessor's representative stated that the County Board lowered the value of the Subject Property to $103,700 in tax year 2014 based on the recommendation of the County Board's Referee that stemmed from a review of three comparable parcels. The County Assessor's representative also stated that these three parcels were not included in either the County Assessor's or the Taxpayer's alleged comparable properties submitted for consideration at the hearing before the Commission.

STANDARD OF REVIEW

22. The Commission's review of the determination of the County Board of Equalization is de novo.[6] "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."[7]
23. 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."[8] 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."[9]
24. 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.[10]
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[11]

GENERAL VALUATION LAW

26. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.[12]

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[5] See, Hearing Notes

[6] 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).

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

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

[9] *Id*.

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

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

27. "Actual value, market value, and fair market value mean exactly the same thing."[13]
28. 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.[14]
29. All real property in Nebraska subject to taxation shall be assessed as of January 1.[15]
30. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[16]
31. 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.[17]

GENERAL EQUALIZATION LAW

32. "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."[18] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[19] 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.[20]
33. 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.[21]
34. 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.[22] Taxpayers are entitled to have their property assessed uniformly and

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[12] 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).
[13] *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
[14] Neb. Rev. Stat. §77-131 (Reissue 2009).
[15] See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).
[16] Neb. Rev. Stat. §77-201(1) (Reissue 2009).
[17] Neb. Rev. Stat. § 77-112 (Reissue 2009).
[18] *Neb. Const.,* Art. VIII, §1.
[19] *MAPCO Ammonia Pipeline v. State Bd. of Equal*., 238 Neb. 565, 471 N.W.2d 734 (1991).
[20] *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).
[21] *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).
[22] *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.[23]

35. The constitutional requirement of uniformity in taxation extends to both rate and valuation.[24] 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]."[25] "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."[26]
36. "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."[27]

VALUATION/EQUALIZATION ANALYSIS

37. The Taxpayer asserted that the Subject Property was overvalued by the County in light of his $91,000 purchase in September 2010 in the aftermath of the 2008 economic crisis, and based on equalization concerns.
38. Guidance regarding consideration of the economic crisis by the County in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers, stating as follows in terms of models used in the residential context:

> Model calibration **is the process of adjusting** mass appraisal formulas, tables, and schedules **to the current market**. During model calibration, the relationships are quantified; that is, the coefficient (as an amount or percentage adjustment) for each independent variable is determined, for example, dollars per square foot of living area. The primary tool for calibration is multiple regression analysis (MRA). . . .
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> Although the structure of a mass appraisal model may be valid for many years, **the model is usually recalibrated 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.**[28]

39. 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

[23] *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).
[24] *First Nat. Bank & Trust Co. v. County of Lancaster,* 177 Neb. 390, 128 N.W.2d 820 (1964).
[25] *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[26] *Id.* at 673, 94 N.W.2d at 50.
[27] *Scribante v. Douglas County Board of Equalization,* 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).
[28] *Property Assessment Valuation, 3rd Ed.,* International Association of Assessing Officers, 2010, pgs. 415, 417-18 (emphasis added).

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 in tax year 2013):

> 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. . . .
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> 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.[29]

40. 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'') <u>**and those same properties plummeted in value after 2006 [and] continuing to the present**</u>. 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

[29] *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).

> 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.[30]

41. 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.[31]
42. 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. Ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result.
43. The County Assessor's representative stated that the County Board lowered the assessed value of the Subject Property to $103,700 in tax year 2014 based on the recommendation of the County Board's Referee that stemmed from a review of three comparable parcels.
44. Based on the documents and statements submitted at the hearing, the Commission finds sufficient evidence that the County Board's $113,200 determination for tax year 2013 that is based on the County Assessor's 2013 reappraisal model is arbitrary or unreasonable.[32]
45. In the case where it is determined that the County Board's determination is unreasonable or arbitrary, the Commission must review the evidence and adopt the most reasonable estimate of actual value presented.[33]
46. The Taxpayer's $91,000 purchase of the Subject Property in December 2010, in light of the sales history charted above, is an important indicator of value for tax year 2013 considering the following: (1) the Subject Property has not been substantially improved since the December 2010 purchase; (2) valuation "reset" of many properties to pre-2008 levels due to the economic crisis and its aftermath; and (3) historical real estate appreciation rates.[34]

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[30] S*ewickley, 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).

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

[32] Assessed value, as determined by the County Board for tax year 2013, was based upon the evidence at the time of the protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board at the 2013 protest proceeding.

[33] See, *Brenner v. Banner Cty. Bd. Of Equal*., 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002); *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

[34] See, *Marina District Development Co., LLC v. City of Atlantic City*, DOCKET NOS. 008116-2009, 008117-2009, 003188-2010, 003194-2010, at p. 55 (New Jersey Tax Court 2013) (as indicated in the excerpts from this case set forth above, ample literature exists that posits that artificial stimuli such as historically low interest rates and subprime lending quotas triggered real estate asset bubbles throughout the United States that burst in the 2007 – 2008 timeframe and thereafter, and that values in many parts of the country have reset to either mid-1990s or early-2000s levels as a result -- I do note, however, that the first-time homebuyer credit in effect from 2008 through mid-2010 was another federal initiative that artificially supported some real estate values for a period of time).

47. The Commission further notes that the that County Board's $103,700 determination for tax year 2014 is supported by a private sector Referee with appraisal certification hired by that entity during the tax year 2014 protest period. The Commission also notes that the Taxpayer indicated that the Subject Property did not change from tax year 2013 to tax year 2014.
48. Based on a review of the documents and statements submitted at the hearing, the Commission finds that the best evidence of the actual value of the Subject Property for tax year 2013 is $103,700.

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 determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

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 2013 is vacated and reversed.
2. That the taxable value of the Subject Property for tax year 2013 is:

Land	$ 21,000
Improvements	$ 82,700
Total	$103,700

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 2013.
7. This order is effective on November 21, 2014.

Signed and Sealed: November 21, 2014.

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Thomas D. Freimuth, Commissioner