

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lowell & Marlene Bedore,
Appellant,

v.

Hitchcock County Board of Equalization,
Appellee.

Case No: 13R 004

Decision and Order Affirming Board of
Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 2,012 sq. ft. residence and a 1,200 sq. ft. detached garage, located in Culbertson, Hitchcock County, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. The Hitchcock County Assessor assessed the Subject Property at \$108,990 for tax year 2013.
3. Lowell & Marlene Bedore (herein referred to as the “Taxpayer”) protested this value to the Hitchcock County Board of Equalization (herein referred to as the “County Board”) and requested a value of \$76,260 for tax year 2013.
4. The County Board determined that the assessed value of the Subject Property was \$106,080 for tax year 2013.
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 June 16, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Thomas D. Freimuth.
7. Tim Thompson, the Taxpayer’s attorney, appeared at the hearing. Marlene Bedore, one of the Taxpayers, was also present at the hearing.
8. D. Eugene Garner, the Hitchcock County Attorney, was present for the County Board. Judy McDonald, the Hitchcock County Assessor, and Cindy McCorkle, Deputy Hitchcock County Assessor, were also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card (herein referred to as “PRC”) for the Subject Property for tax year 2013 found at Tab D of County’s packet submitted at the hearing contains the following “Assessment Value History:”

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$2,605	\$103,475	\$106,080
2012	\$1,680	\$74,580	\$76,260
2011	\$2,100	\$72,000	\$74,100

10. As charted above, the County Board's \$106,080 determination for tax year 2013 includes \$2,605 for land and \$103,475 for the improvement components.
11. Judy McDonald's "Biographical Sketch" found at Tab H indicates that the State Assessment Office performed assessment functions in Hitchcock County for tax years 2001 through 2012. Ms. McDonald served as an Assessment Assistant for the State Assessment Office for tax years 2001 through 2012, and she served as the County Assessor for tax year 2013 after the Hitchcock County assessment function reverted from State to County control on July 1, 2012.
12. The 2013 PRC and the information set forth at Tab A of the County's packet, together with Judy McDonald's statements, indicate that the County Board's \$103,475 determination for tax year 2013 attributable to the Subject Property's improvement components is based on a cost approach mass appraisal model.
13. The 2013 PRC's \$103,475 total valuation of the Subject Property's improvements allocates all value to residential, which includes a 1,200 sq. ft. detached garage. A review of the Marshall & Swift cost detail set forth on the page following the PRC in the County's packet indicates that the \$103,475 total valuation of the Subject Property's improvements was calculated based on the replacement cost new using varying base costs depending upon the type of construction (i.e., the detached garage has a different base cost as compared to the residence).
14. Tab A of the County's packet indicates that the County Board reduced the assessed value of the Subject Property following corrections to the number of bathrooms and finished basement area in response to the Taxpayer's assertions found at Tab B.
15. Page 1 of the 2013 PRC contains account notes indicating that the County Assessor's Office conducted an inspection of the Subject Property on January 2, 2013. The account notes from the inspection indicate that the residence on the Subject Property consists of original hardwood floors in the office, living room, and dining room. The account notes and testimony at the hearing indicate that the kitchen was remodeled in 2012 with new ceramic tile flooring, cupboards, countertops, sinks, cooktops, and ovens. Additionally, changes in interior design of the kitchen repositioned the staircase leading from the first floor to the basement. The account notes also indicate that the kitchen windows were replaced in approximately 2008. Pictures from the inspection are found at Tab D following the Subject Property's PRC.
16. Page 1 of the 2013 PRC also contains account notes indicating that the County Assessor's Office unsuccessfully attempted to contact the Taxpayer on several occasions in June 2013 to conduct an inspection of the Subject Property.¹
17. The PRC for the Subject Property also indicates that it was purchased by the Taxpayer in June 2011, prior to the remodel of the kitchen, for \$90,000.

¹ The Form 422 found at Tab B of the County's packet provides that the "County Assessor's Recommendation" to the County Board in the amount of \$108,990 noted the Taxpayer's failure to respond to multiple attempts to conduct a follow-up inspection in response to the Taxpayer's protest for tax year 2013. The County Assessor indicated that the account notes set forth at the bottom of page 1 of the PRC and continued on an addendum page provide an accurate description of the interaction between her office and the Taxpayer regarding the inspection in January 2013 and the unsuccessful attempts to coordinate a follow-up inspection in June 2013. The Commission also notes that a one-page document found at Tab A of the County's packet indicates that the County Assessor "was denied access by the taxpayer" for inspection purposes. The County Assessor stated at the hearing that this "denial" language was authored by Nebraska Department of Revenue staff and does not accurately reflect her interaction with the Taxpayer. Rather, the County Assessor indicated that the account notes set forth at the bottom of page 1 of the PRC provide a more accurate description of the interaction between her office and the Taxpayer.

18. The Taxpayer provided PRCs and assessment/sale analysis for ten alleged comparable properties located in Culbertson, five of which sold between 2009 and 2013 for amounts ranging from \$44,000 to \$107,500.
19. From a valuation standpoint, the Taxpayer asserted that the County Board's \$106,080 determination for tax year 2013 is unreasonable or arbitrary based on the following: (1) her \$79,695 opinion of value of the Subject Property based on the average per square foot assessed residence value of 12 properties submitted for consideration to the County Board, supported by the \$79,250 average sale price of eight of these 12 properties;² (2) the assessments of the 10 properties submitted for consideration at the hearing before the Commission; (3) the sale prices of five of the 10 parcels ranging from \$44,000 to 107,500; (4) an incorrect number of bedrooms and effective age had been assigned to the Subject Property;³ and (5) photographs indicating that the County Assessor's upward adjustment of the Subject Property's quality and condition ratings are errant.⁴
20. From an equalization standpoint, the Taxpayer asserted that the County Board's \$106,080 determination for tax year 2013 is unreasonable or arbitrary in comparison to the 10 properties submitted for consideration, and that the Subject Property contained only three bedrooms instead of four.
21. The County submitted the following documents and information at the hearing: (1) a one-page written response (Tab A) to the Taxpayer's protest packet (Tab B) submitted to the County Board; (2) 2013 PRCs for the Subject Property, eight of the 10 alleged comparable properties submitted by the Taxpayer, and the County Assessor's five alleged comparable properties with 2010 - 2013 sale prices amounting to \$110,000, \$63,000, \$65,000, \$93,000, and \$123,000; (3) statements found at Tab A of the County packet indicating that there are four bedrooms located at the Subject Property, but that the number of bedrooms does not substantially affect a calculation of actual value using the cost approach; (4) an independent fee appraisal conducted in relation to the purchase of the Subject Property in 2011 with a \$92,000 opinion of value prior to the remodeling of the kitchen; (5) a spreadsheet found at Tab E that compares the 2013 assessed values of the Subject Property with the County's five alleged comparable properties and eight of the 10 alleged comparable properties submitted by the Taxpayer; (6) an Effective Age Chart found at Tab F based on year built and condition; and (7) a land model found at Tab G.
22. The County Assessor asserted that the Taxpayer's alleged comparable properties are not substantially similar or comparable to the Subject Property.
23. The County Assessor's statements and Tab A of the County's packet indicate that the cost approach model applied to the improvement components of residential parcels in Culbertson for tax year 2013 is influenced by the following: (1) use of 2012 Marshall & Swift costing tables, which involved an update in comparison to the 2010 tables used previously; (2) upward quality and condition adjustments applied to some residential parcels in Culbertson based on inspections and review of photographs prior to the

² See, County's Packet Tab B, Taxpayer's Letter submitted to County Board, including spreadsheet.

³ See, Tabs A & B of County's packet. Tab A is the County Assessor's response to the Taxpayer's "Basis for Protest" letter submitted to the County Board in 2013.

⁴ The Commission notes that the Taxpayer also asserted at the County Board hearing that the County Assessor's assigned number of bathrooms and basement area were incorrect. However, the record indicates that the County Board decreased the value of the Subject Property based upon corrections to these characteristics. These errors were not specifically asserted at the Commission's hearing and will therefore not be addressed.

property valuation certification date in March 2013, in order to increase the assessments to sales ratio in the community to meet the 92% to 100% requirement imposed by Nebraska Statutes. The County Assessor indicated that a full inspection of the Subject Property in January 2013 resulted in an increase to the Subject Property's quality rating from Fair+ to Average and its condition rating from Average to Average+.⁵

STANDARD OF REVIEW

24. 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
25. 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
26. 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
27. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

GENERAL VALUATION LAW

28. 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
29. "Actual value, market value, and fair market value mean exactly the same thing."¹³
30. 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
31. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵

⁵ See, PRC for Subject Property (account notes).

⁶ See, Neb. Rev. Stat. §77-5016(8) (2013 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. Hitchcock Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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. Hitchcock 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).

32. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶
33. 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

VALUATION ANALYSIS

34. The Taxpayer derived an opinion of value in the amount of \$79,695 for the Subject Property's residence by multiplying the 2,012 square foot gross living area by \$39.61 per square foot (in contrast, the County assessed the Subject Property's residence component at \$103,475 for tax year 2013).¹⁸ The Taxpayer derived this \$39.61 per square foot multiplier by averaging the per square foot assessed residence value of 12 properties submitted for consideration to the County Board, and she supported her \$79,695 opinion of value by noting that eight of the properties sold for an average of \$79,250.¹⁹
35. The Taxpayer's opinion of value based on the 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.²⁰ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.²¹ This process requires an analysis of sales prices, not assessed values.²² This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.²³
36. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.²⁴ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²⁵ The comparison of assessed values of

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 See, County's Packet Tab B, Taxpayer's Letter submitted to County Board.

¹⁹ See, County's Packet Tab B, Taxpayer's Letter submitted to County Board, including spreadsheet.

²⁰ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

²¹ *Id.* at 301-302.

²² *Id.*

²³ *Id.*

²⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ *Id.*

dissimilar parcels is not recognized as an appropriate approach.

37. An examination of the Taxpayer's alleged comparable properties indicates that the properties have several differences in terms of characteristics in comparison to the Subject Property, including age, size, style, amenities and number of improvements. Additionally, the Taxpayer did not use sales prices exclusively, but instead relied in part upon an examination of assessed values. 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.²⁶
38. The Taxpayer's opinion of value is determined by averaging the per square foot assessed value attributable to the improvements of 12 properties. This approach is not identified in the Nebraska Statutes as an accepted method for determining the actual value of the Subject Property as defined by statute.²⁷ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted fee or 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.
39. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²⁸ 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."²⁹
40. In further support of her assertion that the County overvalued the Subject Property's residence, the Taxpayer submitted PRCs and assessment/sales analysis at the hearing before the Commission regarding the assessments of 10 Culbertson parcels, five of which were subject to sales between \$44,000 and \$107,500.³⁰
41. The Commission notes that the Taxpayer's five sold properties submitted for consideration vary in comparison to the Subject Property in terms of characteristics.
42. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.³¹ If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.³²
43. The Form 422 found at Tab B of the County's packet provides that the County Assessor issued a recommendation to the County Board to change its \$108,990 notice value, based on revised basement finish area and number of fixtures. The County Board adopted the County Assessor's recommendation and determined the actual value of the Subject Property for tax year 2013 was \$106,080.
44. The Subject Property was purchased in 2011, prior to remodeling of the kitchen, for \$90,000. An independent appraisal conducted at the time of the transaction assigned a

²⁶ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

²⁷ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁸ See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

²⁹ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

³⁰ The Commission notes that three of these 10 properties (Eyl, Madron, and Kehler) were included in the 12 properties submitted for consideration by the Taxpayer at the protest level before the County Board.

³¹ 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).

³² 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).

final opinion of value of \$92,000. The Taxpayer asserted that the kitchen remodeling cost amounted to approximately \$30,000.

45. The County Assessor determined the residence was subject to 45% depreciation, and the County Board's determination based upon her recommendation resulted in an assessed value that is approximately \$16,000 more than the Subject Property's 2011 sale price.
46. The County's packet indicates that the County Board's determination of \$106,080 is supported by a cost approach model. The cost approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.³³ A review of the Subject Property's PRC found at Tab D of the County's packet, which includes Marshall & Swift cost detail, together with a review of the Effective Age chart found at Tab F, discloses a correct application of the County's cost approach model.
47. The Commission notes that the Effective Age assigned to the Subject Property is supported by an interior inspection of the Subject Property and professional appraisal practices, and the number of bedrooms assigned to the Subject Property has no substantial impact on a cost approach determination of value.
48. The Commission has reviewed photographs of the Subject Property and other Culbertson parcels submitted at the hearing. Based on this review, together with a review of the statements and documents submitted at the hearing before the Commission, the Commission finds that the County Assessor's upward adjustment of the Subject Property's quality and condition ratings for tax year 2013 after a full inspection in January of that year is not unreasonable or arbitrary. In this regard, the Commission notes that there is no evidence indicating that any of the alleged comparable properties submitted for consideration were improved for tax year 2013 purposes in a manner similar to the Subject Property (remodeled kitchen and amenities that the Taxpayer estimated at \$30,000 in terms of cost). Additionally, the Commission notes that the County Board's determination is supported by the 2011 sale of the Subject Property and the costs associated with remodeling the kitchen.
49. The Taxpayer asserted that the spreadsheet found at Tab E of the County's packet does not provide a fair representation of the Subject Property's assessed value in comparison to the County's alleged comparables and some of the Taxpayer's alleged comparables. The Commission is not persuaded that the County's spreadsheet is anything but an attempt to present the assessed value of the "dwelling" component of the Subject Property with the assessed values of the alleged comparable properties, adjusted by excluding the value of "outbuildings."
50. The Commission notes that page 2 of the Subject Property's PRC found at Tab D of the County's packet indicates that the parcel includes a 1,200 sq. ft. detached garage. A review of the Marshall & Swift cost detail set forth on the page following the PRC indicates that the detached garage contributed \$28,320 (\$23.60 per sq. ft.) to the \$188,139 Replacement Cost New ("RCN") improvement value. Pages 1 and 2 of the PRC indicate that the Replacement Cost New Less Depreciation ("RCNLD") improvement value after application of 45% depreciation amounted to \$103,475 for tax year 2013.
51. The Commission also notes that footnote number 1 of the Taxpayer's property comparison spreadsheet states as follows: "The Bedore, Spencer, Madron, O'Byrne, and Brusoe garages were not included in their valuation." As indicated above, the Marshall & Swift cost detail document for the Subject Property (Bedore) provided by the County

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

demonstrates that a detached garage is included in the \$103,475 improvement component valuation for tax year 2013. The County also provided Marshall & Swift cost detail documents on the page following the PRCs for the Spencer, Madron, and Brusoe properties (the County did not submit documentation regarding the O'Byrne property). The Marshall & Swift cost detail documents for these properties indicate that garages were included for tax year 2013 valuation purposes.

52. Based on a review of the documents and statements submitted at the hearing, the Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's determination is unreasonable or arbitrary for tax year 2013.

GENERAL EQUALIZATION LAW

53. "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."³⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁵ 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.³⁶
54. 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.³⁷
55. 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.³⁸ 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.³⁹
56. The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁰ 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]."⁴¹ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."⁴²
57. "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."⁴³

³⁴ *Neb. Const.*, Art. VIII, §1.

³⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁶ *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).

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

³⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁹ *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).

⁴⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴² *Id.* at 673, 94 N.W.2d at 50.

⁴³ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

EQUALIZATION ANALYSIS

58. As indicated above, an order for equalization requires clear and convincing evidence that either: (1) similar properties were assessed at materially different values;⁴⁴ 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.⁴⁵
59. For equalization analysis purposes, the Taxpayer submitted PRCs and analysis for 10 parcels. The Taxpayer asserted that the improvement components of the Subject Property should be equalized with these 10 alleged comparable parcels.
60. While the Taxpayer's 10 properties submitted for consideration are not identical to the Subject Property, the PRCs indicate that the improvement components of the Subject Property and the alleged comparable properties were valued using a Computer Assisted Mass Appraisal ("CAMA") system, which performs a mass appraisal cost approach.
61. A review of the PRCs for the Subject Property and the alleged comparable properties indicates that similar physical elements located on the parcels were valued at the same material level, and that differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.⁴⁶
62. A review of the PRCs submitted by the Taxpayer indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The characteristics of the properties submitted for consideration vary. Relief based on a review of the assessed value per square unit is only applicable where properties are substantially similar.
63. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization relief.
64. 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 2013.⁴⁷ 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.

⁴⁴ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁵ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴⁶ See, *Id.*

⁴⁷ The Commission notes that the PRC for the Webb property in Trenton submitted for consideration by the County indicates that it sold in May 2012 for \$110,000, and that it was "substantially improved after sale" according to account notes. The PRC for the Webb property also indicates that it was assessed at \$92,360 (84% of the \$110,000 sale price) for tax year 2013, and that the County appraised the property on March 1, 2012. While it is possible that the Webb property's 2013 assessment is substantially less than 100% of market value, the documents and statements before the Commission do not provide clear and convincing evidence regarding market value for equalization analysis purposes as of January 1, 2013. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

CONCLUSION

- 65. 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.
- 66. 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 Hitchcock County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.
- 2. That the taxable value of the Subject Property for tax year 2013 is:

Land	\$ 2,605
Improvements	\$103,475
Total	\$106,080

- 3. This decision and order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock 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 October 24, 2014.

Signed and Sealed: October 24, 2014.

Thomas D. Freimuth, Commissioner