

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gary L. Wiese,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 13R 157

Decision and Order Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property (Subject Property) is a residential parcel located at 3108 Palmer Drive, Fremont, Dodge County, Nebraska. The legal description is contained in the Case File.
2. The Dodge County Assessor (the Assessor) assessed the Subject Property at \$219,015 for tax year 2013.
3. Gary L. & Michele M. Wiese (herein referred to jointly and separately as the Taxpayer), protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$190,000 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$219,015 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 20, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Michelle Wiese was present at the hearing for the Taxpayer.
8. Timothy E. Sopinski, the Deputy Dodge County Attorney, was present for the County Board. Kristen Chambers, an appraiser for the Dodge County Assessor, was also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File (PRF) for the Subject Property indicates that the County Board's \$219,015 determination for tax year 2013 includes \$21,155 for land and \$197,860 for the improvement components.
10. The PRF indicates that the Taxpayer constructed the residential improvements on the Subject Property in 1999.

11. The PRF's property valuation history indicates that the Subject Property was valued at \$212,000 (\$25,745 land and \$186,255 improvements) for tax year 2012 and \$218,140 (\$25,745 land and \$192,395 improvements) for tax year 2011.
12. The Taxpayer asserted that the County Board overvalued the Subject Property and failed to equalize the Subject Property with other recently sold properties.
13. The Taxpayer presented an appraisal of the Subject Property with a final estimate of value of \$212,000 as of September 20, 2011, a denial of credit letter which the Taxpayer stated was issued based on that appraisal, and information regarding alleged comparable properties from Zillow.com.
14. The County Board presented comparable sales reports and PRFs for several properties included in these reports.
15. The County Appraiser indicated that based on the information and testimony presented at the hearing she had a revised opinion of value of \$216,000 for the Subject Property for tax year 2013.
16. The County Appraiser also indicated that she did not believe that the \$219,015 assessed value determination of the County Board was unreasonable or arbitrary.

STANDARD OF REVIEW

17. 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
18. 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
19. 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

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.).

20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
21. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁷

GENERAL VALUATION LAW

22. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
23. "Actual value, market value, and fair market value mean exactly the same thing."⁹
24. 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.¹⁰
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
27. 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.¹³

VALUATION ANALYSIS

28. The Taxpayer alleged that the County Board's determination of assessed value for the Subject Property didn't account for the presence of high tension power lines running adjacent to the Subject Property, the basement finish of the Subject Property, and the Appraisal performed in conjunction with the denial of credit letter.

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

⁷ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁸ 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).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

29. The Taxpayer's assertions that the location of the power lines in relation to the Subject Property is supported by Ms. Chambers' revised opinion of value.
30. The Commission finds that Ms. Chambers revised opinion of value together with the submissions and statements in the hearing constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
31. The Commission finds that Ms. Chambers' revised opinion of value, which is based upon a revision of the County Assessor's determination of value adopted by the County Board, and which accounts for the location of the power lines, basement finish and most recent sales, constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

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."¹⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁵ 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.¹⁶
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.¹⁷
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.¹⁸ 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.¹⁹
35. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁰ 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]."²¹ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."²²

¹⁴ *Neb. Const.*, Art. VIII, §1.

¹⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁶ *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).

¹⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁹ *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).

²⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²² *Id.* at 673, 94 N.W.2d at 50.

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.”²³

EQUALIZATION ANALYSIS

37. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁴ 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.²⁵
38. For equalization analysis purposes, the Taxpayer did not submit PRFs for their alleged comparable parcels.
39. The Commission notes that section 8 of the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

NOTE: Copies of the County’s Property Record File for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

40. In part because PRFs were not submitted by the Taxpayer for the parcels submitted for consideration, together with a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer’s assertions that the Subject Property was not equalized with other real property does not constitute clear and convincing evidence that the County Board’s determination for tax year 2012 was arbitrary or unreasonable, or that the assessed value of the Subject Property was grossly excessive.

CONCLUSION

41. 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.
42. 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.

²³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁴ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁵ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

ORDER

IT IS ORDERED THAT:

1. The Decision of the Dodge County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 21,155
<u>Improvements</u>	<u>\$194,845</u>
Total	\$216,000

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 2013.
7. This Decision and Order is effective on October 31, 2014.

Signed and Sealed: October 31, 2014

Thomas D. Freimuth, Commissioner