

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Steve L. Villamonte,
Appellant,

Case No: 13R 303

v.

Decision and Order Affirming the
Determination of the Cass
County Board of Equalization

Cass County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property (Subject Property) is residential property, located at 19615 Shoreline Circle, Plattsmouth, Cass County, Nebraska , with a legal description of: BUCCANEER BAY LOT 45 BLK 27 33-13-13.
2. The Cass County Assessor (the Assessor) assessed the Subject Property at \$255,500 for tax year 2013.
3. Steve L. Villamonte (herein referred to as the “Taxpayer”) protested this value to the Cass County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value of \$234,000 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$255,500 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 July 9, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Steve L. Villamonte, the Taxpayer, appeared at the hearing.
8. S. Colin Palm, a Deputy Cass County Attorney, was present for the Cass County Board of Equalization (the County Board).
9. Allen Sutcliffe, the Cass County Assessor, was also present.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

10. The Taxpayer asserted that the Subject Property was assessed at a higher value than other superior properties located in the same neighborhood. He specifically asserted that: (1) the Subject Property had inferior landscaping; (2) the Subject Property’s windows required \$50,000 of repair work to fix mold and rotting; (3) the Subject Property did not have vinyl siding like the other properties; (4) other properties had unique amenities such as heated basement floors and geothermal heating & air; and (5) the Subject Property has a smaller useable finished area than the other properties. In support of these assertions the Taxpayer provided a list of the other properties in his neighborhood and a description of his opinion of their important characteristics.
11. The Taxpayer asserted that it was unreasonable or arbitrary for the value of the other homes in his neighborhood to decrease, when the value of the Subject Property increased.

The Taxpayer asserted that due to the economic recession the assessed value of the Subject Property should not have increased.

12. The County Assessor provided the property record cards (PRCs) for the Subject Property and the other properties included in the Taxpayer's list.
13. The County Assessor explained that changes of assessed values for the other properties stemmed from a review of the properties and changes in pertinent characteristics. Specifically, the County Assessor asserted that: (1) the Herek Property's assessed value had decreased because of a correction to the garage area and economic depreciation; (2) the Quintana Property's assessed value decreased because of a correction to economic depreciation; (3) the Alexander Property's assessed value decreased because of a correction to the area of the residence and economic depreciation; and (4) the McCartney Property increase because of corrections that resulted in an increase in area and changes to other characteristics.
14. The Taxpayer was offered the opportunity to continue the hearing to allow the County Assessor to inspect the Subject Property to determine if the corrections to the Subject Property were necessary. The Taxpayer declined this opportunity.
15. The County Assessor asserted that the properties were valued using the cost approach, and that the degree of landscaping did not affect the value of the Subject Property.

STANDARD OF REVIEW

16. 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
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."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
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.⁵
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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.).

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.⁷
21. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸
22. "Actual value, market value, and fair market value mean exactly the same thing."⁹
23. 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
24. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
25. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
26. 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

1. The Taxpayer asserted that the Subject Property was assessed at a higher value than other superior properties located in the same neighborhood, and that it was unreasonable or arbitrary for the value of the other homes in his neighborhood to decrease, when the value of the Subject Property increased. The Taxpayer asserted that due to the economic recession the assessed value of the Subject Property should not have increased.
2. The Property Record Card indicates that the County Board relied upon the County Assessor's opinion of the actual value of the Subject Property as determined by a cost approach.

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).

⁸ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

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).

3. The cost approach includes six steps:

(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.¹⁴

4. The County Assessor's cost approach can only produce an opinion of value as reliable as the data upon which it is based. The Taxpayer did not dispute any of the characteristics found in the PRC, and he declined the opportunity for inspection.
5. The County Assessor's comments also explained that the changes in assessed values to the Taxpayer's comparable properties were a direct result of changes to their characteristics as confirmed in a recent review.
6. The PRCs for the Subject Property and the Taxpayer's comparable properties indicate that the properties' assessed values were calculated using a statutorily permissible method.
7. Further, the cost approach takes into account general economic conditions through the application of an economic depreciation.¹⁵ The PRCs for the Subject Property and Taxpayer's comparable properties indicate that all properties received a 10% economic depreciation factor.
8. For these reasons, the Commission finds that the County's valuation of the Subject Property for tax year 2013 is based on a statutorily permissible assessment method. For these same reasons, the Commission further finds that the Taxpayer's opinion of value and assertions do not constitute clear and convincing evidence that the County Board's determination for tax year 2013 was unreasonable or arbitrary.

GENERAL EQUALIZATION LAW

9. "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."¹⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁷ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

¹⁴ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

¹⁵ International Association of Assessing Officers, *Property Assessment Valuation*, at 261 (3rd ed. 2010).

¹⁶ *Neb. Const.*, Art. VIII, §1.

¹⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁸

10. 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.¹⁹
11. 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.²⁰ 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.²¹
12. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²² 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].”²³ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁴
13. “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.”²⁵

EQUALIZATION ANALYSIS

14. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of his comparable properties referenced previously. In support of this assertion, the Taxpayer submitted documentation of the current assessed values of the Taxpayer’s comparable properties, and description of the properties’ characteristics that he determined were most pertinent.
15. The County Assessor provided the PRCs for the Taxpayer’s comparable properties and the Subject Property, which indicates the pertinent characteristics of the properties and the cost approach calculations for the same.
16. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁶ 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.²⁷
17. The County Assessor’s representative stated that the improvement components of the properties submitted for consideration were not substantially similar due to differences

¹⁸ *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).

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

²⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²¹ *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).

²² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

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

²⁶ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁷ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

- regarding one or more of the following characteristics: size, amenities, effective age and location. Based on these statements and a review of the respective Property Record Cards, the Commission finds that there is not clear and convincing evidence that these properties are substantially similar for improvement value equalization relief purposes.
18. 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. 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

19. 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.
20. 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 Cass County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$255,500.
3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 8, 2014.

Signed and Sealed: October 8, 2014.

Thomas D. Freimuth, Commissioner