

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Vern D. Somer,
Appellant,

v.

Douglas County Board of Equalization
Appellee.

Case No: 12R 875

Decision Reversing
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 25 Ginger Cove Road, Valley, Douglas County, Nebraska, with a legal description of: GINGER COVE ADD LOT 25 BLOCK 0 IRREG.
2. The Douglas County Assessor assessed the Subject Property at \$220,900 for tax year 2012.
3. Vern D. Somer (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$220,900 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 May 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. Vern D. Somer and Judi Somer, the Taxpayer’s spouse, were present at the hearing.
8. Larry Thomsen, an assessor with the Douglas County Assessor’s Office, was present for the County Board.

STANDARD OF REVIEW

9. 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
10. 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

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).

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

11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. 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

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

15. The Property Record File contained in the Assessment Report submitted by the County for the Subject Property indicates that the County Board’s \$220,900 determination for tax year 2012 includes \$79,900 for land and \$141,000 for the improvement component.
16. The Assessment Report indicates that the County Assessor’s \$141,000 notice value for tax year 2012 attributable to the Subject Property’s improvement component, which was relied upon by the County Board, is based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis.⁹ Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.¹⁰ The Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property’s improvement component.¹¹
17. The Assessment Report contains the following property valuation history at page 16:

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).

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 Assessment Report, pg. 11.

¹⁰ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

¹¹ Assessment Report, pgs. 14 & 15.

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2012	8/7/2012	79,900	141,000	220,900	County Board
2012	3/9/2012	79,900	141,000	220,900	Assessor Reappraisal
2008	8/7/2008	79,900	122,900	192,800	County Board
2008	3/10/2008	79,900	122,900	192,800	Assessor Reappraisal
2005	7/3/2005	39,000	136,000	175,000	County Board
2005	3/19/2005	39,000	149,900	188,900	Assessor Reappraisal
2001	7/26/2001	39,000	91,000	130,000	County Board
2001	3/16/2001	39,000	161,600	200,600	Assessor Reappraisal
2000	3/12/2000	39,000	87,000	126,000	MVU
1999	5/21/1999	39,000	78,800	117,800	State BOE

18. The Taxpayer submitted an opinion of value in the amount of \$150,000 for the Subject Property for tax year 2012. In support of this opinion, the Taxpayer provided screenshots from the Douglas County Assessor's website of three Ginger Cove lake development properties that sold in 2012 for significantly less than 2012 assessed value, together with analysis thereof.
19. In further support of this opinion of value and his assertion that the County overvalued the Subject Property, the Taxpayer's documents and statements submitted at the hearing are summarized as follows: (1) the Subject Property's assessment increase from \$192,800 in tax years 2008 - 2011 to \$220,900 in tax year 2012 is unreasonable in the aftermath of the 2008 economic crisis; (2) properties listed for sale in the Ginger Cove lake development in the aftermath of the economic crisis experienced abnormally long marketing periods of two to four years prior to sale; (3) the Subject Property is unique among the approximate 160 Ginger Cove lake development properties in that its building components prevent year-round occupancy (the Taxpayer estimated that only five Ginger Cove properties are not suitable for year-round occupancy); (4) incorrect square footage (1,188 rather than 1,320); (5) condition is Average rather than Good.
20. The Taxpayer's written and verbal statements asserted that he would be fortunate to sell the Subject Property for \$175,000 as of the date of assessment of January 1, 2012.
21. The Taxpayer did not provide an appraisal or Property Record Files for the properties referenced above.
22. The County's Assessment Report includes the Property Record Files for the Subject Property and three alleged comparable properties.
23. Page 13 of the Assessment Report includes reference to the sale of these three alleged comparable properties in the Ginger Cove lake development. These properties have gross living areas ("GLAs") of 1,295 sq. ft. (\$290,000 sale in October 2009); 1,008 sq. ft. (\$300,000 sale in May 2010); and 1,158 sq. ft. (\$344,500 sale in July 2011). As noted below, the Subject Property's revised GLA is 1,188 sq. ft.
24. The Assessment Report at page 11 contains "Account Notes" dated September 11, 2009, which state that the Subject Property is "a unique property with little market data to support value."

25. The Assessment Report indicates that the Subject Property received a deduction in actual value based on its age and multi-level design.¹²
26. The Assessment Report at page 11 states that the most recent County interior/exterior inspection occurred in January 2013. This inspection confirmed the County's Good condition rating of the Subject Property.
27. Page 11 of the Assessment Report indicates that an exterior inspection of the Subject Property in November 2012 resulted in a correction of the Subject Property's gross living area ("GLA") from 1,320 sq. ft. to 1,188 sq. ft.
28. Page 14 of the Assessment Report includes a Market Calculation Detail document indicating that the Subject Property's tax year 2012 assessment was based on 1,320 sq. ft. GLA, which contributed \$66,000 in value. A Revised Market Calculation Detail for the Subject Property found at page 15 of the Assessment Report indicates that the Subject Property's corrected GLA (1,188 sq. ft.) contributes \$59,400 in value. Thus, the revised opinion of value of the Subject Property for tax year 2012 based on this adjustment amounts to 213,354.¹³
29. The County Board's Referee Report is attached at the end of the County's Assessment Report. The first Referee to review the Subject Property for tax year 2012 purposes stated as follows in support of his recommendation to lower the Douglas County Assessor's \$220,900 notice value to \$200,000: "Assessor has old sales, one from 2011 that is a superior home, larger, high quality and 3 car garage. This is one of the oldest and smallest homes on the lake."
30. The above-noted Referee's recommendation was rejected by the Referee Coordinator, who stated as follows: "In looking at the Ginger Cove Market there has been only 1 reported sale under \$220,000 looking back to 2009 and that was an estate, almost a tear down situation. It is felt the subject is valued at the bottom of the realistic price range for the area now."

GENERAL VALUATION LAW

31. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁴
32. "Actual value, market value, and fair market value mean exactly the same thing."¹⁵
33. 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.¹⁶
34. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷
35. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

¹² See, Assessment Report, pgs. 14 and 15 (original and revised market calculation detail of the Subject Property).

¹³ See, Assessment Report, pg. 15.

¹⁴ 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).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

36. 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.¹⁹

VALUATION ANALYSIS

37. The Taxpayer and County agree that the Subject Property's GLA is 1,188 sq. ft. rather than the 1,320 sq. ft. used for purposes of the County Board's \$220,900 determination for tax year 2012. The Revised Market Calculation detail found at page 15 of the Assessment Report, which corrects this GLA inaccuracy, indicates that the Subject Property should have been assessed at \$213,354 for tax year 2012.
38. The Commission finds that the Subject Property's Revised Market Calculation Detail document, together with a review of the documents and statements submitted at the hearing, constitute clear and convincing evidence that the GLA of the Subject Property was 1,188 sq. ft. rather than 1,320 sq. ft. for tax year 2012.
39. The Commission finds that it was unreasonable or arbitrary for the County Board to adopt the County Assessor's \$220,900 opinion of value for tax year 2012 based on Subject Property GLA of 1,320 sq. ft. rather than 1,188 sq. ft.
40. The Taxpayer's \$150,000 opinion of value based in part on the use of sales prices of properties in the Ginger Cove lake development can best be described as an attempted sales comparison approach.
41. Under 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
42. An examination of the Taxpayer's properties submitted for consideration indicates that they are different in terms of characteristics, most significantly with respect to size. The properties submitted for consideration have GLAs of 2,478 sq. ft., 2,530 sq. ft. and 1,659 sq. ft., while the Subject Property's GLA is 1,188 sq. ft.²⁴

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2009).

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

²¹ *Id.* at 301-302.

²² *Id.*

²³ *Id.*

²⁴ See, Taxpayer's screenshots from Douglas County Assessor's website.

43. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.²⁵ If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.²⁶ The Commission is unable to assign significant weight to the Taxpayer's \$150,000 opinion of value without adjustments.
44. The Taxpayer's efforts to produce useful information, however, are noticed by this Commissioner. Moreover, even though it is this Commissioner's understanding that an appraisal offered by a non-licensed individual has rarely if ever constituted clear and convincing evidence that the County Board's valuation determination was arbitrary or unreasonable, it is my view that a viable appraisal can be produced by a non-licensed property owner for ad valorem tax purposes in Nebraska.
45. Guidance for purposes of applying the sales comparison approach and other valuation methods is available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.
46. Further, with respect to the Taxpayer's concern regarding insufficient consideration of the economic crisis by the County, general guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.²⁷ For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.²⁸ Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated 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.**²⁹

47. 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

²⁵ 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).

²⁶ 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).

²⁷ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

²⁸ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 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):

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. . . .

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.³⁰

48. 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”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** 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

³⁰ *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.³¹

49. 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.³²
50. 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.
51. As indicated in the assessment history chart above, the County Board’s determinations for tax years 2008 through 2011 equaled the County Assessor’s \$192,800 reappraisal of the Subject Property in March of 2008, several months prior to time in September of 2008 when the general public became aware of the economic crisis due to the failure of Lehman Brothers, a large financial institution (see economic crisis timeline in Borgata casino case above). This March 2008 reappraisal in the amount of \$192,800, which was adopted by the County Board on August 7, 2008, reflects a 48% increase in comparison to the County Board’s \$130,000 determination for tax years 2001 through 2004. Moreover, the County Assessor’s March 2012 reappraisal in the amount of \$220,900, which was adopted by the County Board on August 7, 2012, reflects a 70% increase in comparison to the County Board’s \$130,000 determination for tax years 2001 through 2004.
52. The Taxpayer provided documentation and testimony indicating that several assessments in the Subject Property’s market area significantly exceeded sale prices. This raises concern regarding the validity of the County’s mass appraisal model for purposes of determining the actual value of the Subject Property for tax year 2012. On the other hand, Page 13 of the County’s Assessment Report includes reference to the sale of three alleged comparable properties in the Ginger Cove lake development that are similar in terms of GLA as compared to the Subject Property. The sale prices of two of these alleged County comparables exceeded the year-of-sale assessed value (the third sold for \$290,000 in October 2009 when it was assessed at \$315,000).³³
53. Based on the Taxpayer’s documentation and statements, together with all of the other documents and statements submitted at the hearing including the County representative’s

³¹ *Sewickley, 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).

³² *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

³³ See, Assessment Report pgs. 13, 23, 29, 35.

revised opinion of value, the Commission finds sufficient evidence that the County Board's \$220,900 determination for tax year 2012 is arbitrary or unreasonable.³⁴

54. The Commission finds that the best evidence of value in this case is the County Board's revised opinion of value in the amount of \$213,350 rounded.

GENERAL EQUALIZATION LAW

55. "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."³⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁶ 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.³⁷
56. 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.³⁸
57. 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.³⁹ 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.⁴⁰
58. The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴¹ 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]."⁴² "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."⁴³
59. "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."⁴⁴

³⁴ Assessed value, as determined by the County Board for tax year 2012, 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 2012 protest proceeding.

³⁵ *Neb. Const.*, Art. VIII, §1.

³⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁷ *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).

³⁸ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁰ *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).

⁴¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴³ *Id.* at 673, 94 N.W.2d at 50.

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

EQUALIZATION ANALYSIS

60. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴⁵ 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.⁴⁶
61. A comparison of alleged comparable properties to determine if the Subject Property's assessed valuation is grossly excessive requires sufficient documentation to ascertain whether the Subject Property and alleged comparable properties are truly comparable but valued at materially different levels, or whether differences in assessed values are directly attributable to differences between the Subject Property and the alleged comparable properties. The Taxpayer did not provide Property Record Files for any of his alleged comparable properties.
62. 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.*
63. The Commission is unable to properly evaluate similarity because Property Record Files were not submitted by the Taxpayer for consideration.
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 2012. Thus, the Commission is unable to determine whether the Subject Property was assessed at an excessive percentage of market value in comparison to other properties.
65. The County did provide Property Record Files for its alleged comparable properties.⁴⁷ While these alleged comparable properties are not identical to the Subject Property, the Assessment Report indicates that the Subject Property and alleged comparable properties were valued using the County's CAMA system, which performs a mass appraisal sales comparison approach.⁴⁸
66. A review of the market calculation details provided in the Property Record Files 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

⁴⁵ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁶ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴⁷ See, *Id.* at 12-30.

⁴⁸ See, *Id.* at 10, 16, 22, and 29.

differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.⁴⁹

CONCLUSION

- 67. 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.
- 68. 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 2012 is vacated and reversed.
- 2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$ 79,900
Improvements	\$ 133,450
Total	\$ 213,350

- 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 September 8, 2014.

Signed and Sealed: September 8, 2014.

Thomas D. Freimuth, Commissioner

⁴⁹ See, *Id.*