

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Marvin J. Piper
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 13C 259

Decision and Order Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a commercial parcel improved with three storage facilities located at 206 West Howard Street in Hooper, Dodge County, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. The Dodge County Assessor assessed the Subject Property at \$162,015 for tax year 2013.
3. Marvin J. Piper (herein referred to as the “Taxpayer”) protested this value to the Dodge 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 \$162,015 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 May 28, 2014, at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Marvin J. Piper, the Taxpayer, was present at the hearing.
8. Stacey Hultquist, Deputy Dodge County Attorney, was present for the County Board. Kristen Chambers, an employee of the Dodge County Assessor’s Office, was also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card Property Record Card submitted by the County Board at the hearing before the Commission indicates that the County Board’s \$162,015 determination for tax year 2013 includes \$13,755 for land and \$148,260 for the improvement components.
10. The Property Record Card states that the Subject Property’s 8,784 square foot improvement is classified by the County as “Mini-Warehouse” under “Occupancy” code 386.
11. The Property Record Card’s sales history indicates that the Taxpayer purchased the land component of the Subject Property for \$3,000 in 2003. The Property Record Card indicates that the Taxpayer constructed the improvement components on the Subject Property in 2004, 2005, 2009, and 2012.
12. The Property Record Card’s property valuation history indicates that the County Board’s determinations for tax years 2011 and 2012 amounted to \$83,425 (land: \$4,125; improvements: \$79,300) and increased to \$162,015 in tax year 2013.

13. The Property Record Card indicates that the Dodge County Assessor's Office performed an inspection of the Subject Property on February 8, 2013, as a result of the Taxpayer's acquisition of a building permit in October 2011 that added 12 storage units to the Subject Property's 28 existing units as of the assessment date of January 1, 2013. The County Assessor's representative stated that this inspection generated the increase in the Subject Property's land and improvement components from tax year 2012 to tax year 2013.
14. The Property Record Card and the statements of the County Assessor's representative indicate that the cost approach is the basis of the County Assessor's \$162,015 notice value and the County Board's final determination for tax year 2013. The County Assessor's representative indicated that this cost valuation is derived from the Marshall & Swift valuation service.
15. The Taxpayer asserted that the County Board overvalued the Subject Property with the use of an unreasonable or arbitrary cost approach model. In support of this assertion, the Taxpayer submitted documentation estimating the cost to construct the Subject Property. The Taxpayer's documentation asserts that this \$88,566 estimate, which is derived from sale-priced Menard's building materials, includes concrete and labor.
16. In support of his overvaluation assertion, the Taxpayer submitted Property Record Cards and analysis regarding the County Board's tax year 2013 assessments for other storage facilities located in Hooper, Scribner, Fremont, North Bend, and Snyder.
17. Based on the above-noted documentation, the Taxpayer asserted that the actual value of the Subject Property should be lowered to \$85,000 for tax year 2013.

STANDARD OF REVIEW

18. 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
19. 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

¹ 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).

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.*

20. 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
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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.⁷
23. “Actual value, market value, and fair market value mean exactly the same thing.”⁸
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.⁹
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁰
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹¹
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.¹²

VALUATION ANALYSIS

28. The Taxpayer asserted that the actual value of the Subject Property amounted to \$85,000 for tax year 2013. In support of this assertion the Taxpayer submitted an \$88,566 estimate to construct the improvement components. In further support of this assertion, the Taxpayer submitted documentation that included analysis of the tax year 2013

⁵ Neb. Rev. Stat. §77-5016(8) (2010 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 *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2009).

assessments of five Dodge County storage facilities -- one located two blocks from the Subject Property in Hooper, and the others located in nearby communities.

29. The Taxpayer did not submit a fee appraisal of the Subject Property at the hearing before the Commission. The Commission further notes that the Taxpayer did not submit income approach information for the Subject Property or comparable properties.
30. The Taxpayer's opinion of value relies in part on the use of assessed values of storage facilities in Dodge County. This approach is not a commonly accepted mass appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.
31. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's use of assessed values of storage warehouses is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's \$85,000 opinion of value to the extent it relies on the use of assessed values of storage facilities in Dodge County.
32. The Taxpayer's opinion of value also relies in part on his \$88,566 Menard's building cost estimate, which he allocated as follows on an approximate basis: (1) building materials - \$58,000; (2) concrete - \$13,000; and (3) labor - \$18,000.
33. 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. Additionally, the County Assessor's representative indicated that this cost valuation is derived from the Marshall & Swift valuation service, a national publication that contains updated cost information adjusted on a region-by-region basis.
34. 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.¹³

35. The cost approach includes steps that estimate the cost to complete components of the Subject Property, however, cost estimating is not the same as appraising.¹⁴ When

¹³ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

¹⁴ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 238 (3rd ed. 2010).

- estimating the cost to complete components, the assessor should use typical costs obtained from the market, instead of actual costs to construct the real property.¹⁵
36. Actual costs to construct items may vary significantly, in part because bids for projects vary substantially based upon contractor and owner needs or the business model from project to project.¹⁶ In order to account for this variance, the assessor must either use nationally published cost manuals that contain indexes for adjusting to local markets, or construct their own cost manual using known market data.¹⁷
37. For these reasons, the Commission finds that the County's valuation of the Subject Property for tax year 2013, which relies on the Marshall & Swift costing service to value the improvement components at \$148,260, is based on a statutorily permissible assessment method. For these same reasons, the Commission further finds that the Taxpayer's \$88,566 cost estimate for the Subject Property's improvement components does not constitute clear and convincing evidence that the County Board's determination for tax year 2013 was unreasonable or arbitrary.
38. The Commission notes that valuation guidance 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, the income approach and the cost approach. 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.

GENERAL EQUALIZATION LAW

39. "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution."¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰
40. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.²¹
41. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²² Taxpayers are entitled to have their property assessed uniformly and

¹⁵ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 237 (3rd ed. 2010).

¹⁶ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 237-238 (3rd ed. 2010).

¹⁷ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 238 (3rd ed. 2010).

¹⁸ *Neb. Const.*, Art. VIII, §1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

proportionately, even though the result may be that it is assessed at less than the actual value.²³

42. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”²⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁶
43. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²⁷

EQUALIZATION ANALYSIS

44. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of storage facilities located in Dodge County. In support of this assertion, the Taxpayer submitted Property Record Cards and analysis regarding the County Board’s tax year 2013 assessments for storage facilities located in Hooper, Scribner, Fremont, North Bend, and Snyder.
45. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁸ 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.²⁹
46. The County Assessor’s representative stated that the improvement components of the properties submitted for consideration were not substantially similar due to differences 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.
47. The County Assessor’s representative stated, however, that the land component of the storage facility located in Snyder assessed at \$.18 per square foot (27,400 sq. ft./\$4,930 = \$.18) for tax year 2013 is comparable to the Subject Property’s land component assessed at 1.82 per square foot for the same year (25,041 sq. ft./\$13,755 = \$1.82). Thus, the Commission finds there is clear and convincing evidence that the assessed value of the land component of the Subject Property is grossly excessive as compared to the land component of the comparable parcel located in Snyder. The Commission further finds that the equalized value of the Subject Property’s land component is \$4,500 rounded (25,041 sq. ft. x \$.18 per sq. ft. = \$4,507).

²³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

²⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

48. 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

- 49. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
- 50. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

ORDER

IT IS ORDERED THAT:

- 1. The decision of the Dodge County Board of Equalization determining the value of the Subject Property for tax year 2013 is vacated and reversed.
- 2. That the taxable value of the Subject Property for tax year 2013 is:

Land	\$ 4,500
Improvements	<u>\$148,260</u>
Total	\$152,760

- 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 (2013 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 September 4, 2014.

Signed and Sealed: September 4, 2014.

Thomas D. Freimuth, Commissioner