

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenneth C. Grosse,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 13R 306

Decision and Order Affirming County
Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located at 2116 Nye Street, Fremont, 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 \$156,815 for tax year 2013.
3. Kenneth C. Grosse (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 \$164,720 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 3, 2014, at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Kenneth C. Grosse and his spouse, Rita Grosse, were present at the hearing.
8. Timothy E. Sopinski, Deputy Dodge County Attorney, was present for the County Board. Brittny King, the Dodge County Assessor, 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 \$164,720 determination for tax year 2013 includes \$13,245 for land and \$151,475 for the improvement components.
10. The Property Record Card’s sales history indicates that the Taxpayer purchased the Subject Property for \$147,500 in 2004. The Property Record Card also indicates that the Taxpayer obtained a building permit in September 2004 to perform finish work in the Subject Property’s basement, and that this finish work included a bathroom and an office.
11. The Property Record Card’s property valuation history indicates that the County Board’s determinations for tax years 2011 and 2012 amounted to \$145,500(land: \$27,315; improvements: \$118,185) and increased to \$164,720 in tax year 2013.
12. The Property Record Card indicates that the Dodge County Assessor’s Office performed an inspection of the Subject Property on June 21, 2013. The County Assessor’s statements and documents submitted at the hearing before the Commission indicate that this inspection generated the increase in the Subject Property’s \$156,815 notice value to the \$164,720 amount recommended by the County Assessor and adopted by the County

Board. The County Assessor's statements and the Property Record Card indicate that a reappraisal of the Subject Property's market area generated the increase in assessed value from tax year 2012 to tax year 2013.

13. The Property Record Card and the statements of the County Assessor indicate that the cost approach is the basis of the County Assessor's \$164,720 opinion of value and the County Board's final determination for tax year 2013. The County Assessor indicated that this cost valuation is derived from the Marshall & Swift valuation service.
14. The Taxpayer asserted that the County Board overvalued the Subject Property with the use of an unreasonable or arbitrary cost approach model.
15. In support of his overvaluation assertion, the Taxpayer submitted Property Record Cards and analysis regarding the County Board's tax year 2013 assessments of seven residences located on the same street as the Subject Property, which is located at 2116 Nye St. The Taxpayer asserted that these seven properties are similar to the Subject Property in terms of floor plan and size.¹ Three of these properties sold in either 2011 or 2012 for the following prices: (1) \$135,000 sale November 23, 2011 (2106 Nye St.); (2) \$142,000 sale July 17, 2012 (2105 Nye St.); and (3) \$142,000 sale December 15, 2012 (2118 Nye St – the County Assessor indicated that this property's assessed value in the amount of \$161,800 stems from a building permit acquired by the buyer for improvement purposes).
16. In further support of 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 County's measurements of the Subject Property's gross living area ("GLA") and basement unfinished/finished area contained on the Property Record Card are inaccurate;² (2) a fee appraisal valued the Subject Property at \$145,500 in 2009 (the Taxpayer submitted the first and last pages of this appraisal); and (3) a recommendation from the County Board's Referee for tax year 2013 to reduce the assessed value of the Subject Property to \$145,500 based in part on sales in the immediate area.
17. Based on the above-noted documentation, the Taxpayer asserted that the actual value of the Subject Property should be lowered to \$145,500 for tax year 2013.³
18. The County's Assessment Report includes the Property Record Files for the Subject Property and three alleged comparable properties that sold in 2012, two of which were also submitted by the Taxpayer (2118 Nye and 2105 Nye). The other alleged comparable submitted by the County is located at 2130 Nye St., which sold for \$160,000 on June 4, 2012.

STANDARD OF REVIEW

19. The Commission's review of the determination of the County Board of Equalization is de novo.⁴ "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

¹ The Subject Property and the seven properties submitted for consideration by the Taxpayer comprise four duplexes on Nye Street (2104 & 2106 Nye; 2105 & 2107 Nye; 2115 & 2117 Nye; and 2116 (Subject Property) & 2118 Nye).

² As indicated above, the Property Record Card indicates that the Dodge County Assessor's Office performed an inspection of the Subject Property on June 21, 2013. The County Assessor did not agree with the Taxpayer's assertion that the measurements stemming from this inspection were incorrect.

³ See, Taxpayer's two-page letter to the Commission.

⁴ 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”⁵

20. 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.”⁶ 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.”⁷
21. 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.⁸
22. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

GENERAL VALUATION LAW

23. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰
24. “Actual value, market value, and fair market value mean exactly the same thing.”¹¹
25. 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.¹²
26. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹³
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁴
28. 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

⁵ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

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

¹² Neb. Rev. Stat. §77-131 (Reissue 2009).

¹³ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁵

VALUATION ANALYSIS

29. The Taxpayer asserted that the actual value of the Subject Property amounted to \$145,500 for tax year 2013.
30. The Taxpayer's \$145,500 opinion of value based in part on the use of sales prices of properties in close proximity to the Subject Property can best be described as an attempted sales comparison approach.
31. 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.¹⁶ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.¹⁷ This process requires an analysis of sales prices, not assessed values.¹⁸ This approach also requires that analyzed properties must be comparable to the subject property, and receive adjustments for any differences.¹⁹
32. An examination of the Taxpayer's seven properties submitted for consideration indicates that they are different in terms of characteristics, most significantly with respect to basement finish area and/or number of bathrooms.
33. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.²⁰ If an alleged comparable property has different physical, functional, and locational characteristics, then the adjustments must be made to account for these differences.²¹ The Commission is unable to assign significant weight to the Taxpayer's \$145,500 opinion of value without adjustments.
34. The Commission is also unable to assign significant weight to the Taxpayer's \$150,000 appraisal from 2009, due to age and because the complete report was not submitted for review.
35. The Commission further notes that the County submitted the Property Record Card for the parcel located at 2130 Nye St., which sold for \$160,000 on June 4, 2012. Although the Taxpayer asserted that that this property's interior is superior to the Subject Property, it has three bathrooms like the Subject Property and is similar in terms of finished basement area. The Commission also notes that the Property Record Cards for the 2130 Nye property and the Subject Property indicate that they are rated Good in terms of quality and Average in terms of condition.
36. For the reasons discussed above, the Commission finds that the Taxpayer has not provided clear and convincing evidence that the County Board's determination for tax

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁶ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

¹⁷ *Id.* at 301-302.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 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).

²¹ 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).

year 2013 is unreasonable or arbitrary.

37. 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.
38. 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.

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."²² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²³ 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.²⁴
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.²⁵
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.²⁶ 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.²⁷
42. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁸ 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

²² *Neb. Const.*, Art. VIII, §1.

²³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁴ *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).

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

²⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁷ *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).

²⁸ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

[sic].”²⁹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁰

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.”³¹

EQUALIZATION ANALYSIS

44. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³² 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.³³
45. For equalization analysis purposes, the Taxpayer submitted Property Record Files for seven parcels located on Nye St., and the County provided the Property Record File for the parcel located at 2130 Nye St.
46. While these alleged comparable properties are not identical to the Subject Property, the Property Record Cards indicate that the Subject Property and the alleged comparable properties were valued using the County’s CAMA system, which performs a mass appraisal cost approach.
47. A review of 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 differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.³⁴
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 2012. 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 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.
50. 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.

²⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁰ *Id.* at 673, 94 N.W.2d at 50.

³¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³² See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³³ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁴ See, *Id.*

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 affirmed.
2. That the taxable value of the Subject Property for tax year 2013 is \$164,720.
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 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 9, 2014.

Signed and Sealed: September 9, 2014.

Thomas D. Freimuth, Commissioner