

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Robert D. Bruhn Jr.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13R 188

Decision and Order Affirming  
County Board of Equalization

**GENERAL BACKGROUND & PROCEDURAL HISTORY**

1. The parcel under appeal, which is referred to herein as the “Subject Property,” is improved with a 2,430 sq. ft. residence located at 18424 Thayer Street, Bennington, Douglas County, Nebraska. The Subject Property’s legal description is contained in the Case File.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$419,100 for tax year 2013.
3. Robert D. Bruhn Jr. (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessment in the amount of \$357,828 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$419,100 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 21, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference Room 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Robert D. Bruhn Jr. appeared at the hearing.
8. G. Kevin Corcoran, an Appraiser employed by the Douglas County Assessor’s Office, was present for the County Board.

**SUMMARY OF HEARING DOCUMENTS & STATEMENTS**

9. The Property Record File (“PRF”) contained in the 2013 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$419,100 determination for tax year 2013 includes \$116,600 for land and \$302,500 for the 2,430 sq. ft. improvement component constructed in 2012.
10. The Assessment Report indicates that the Taxpayer purchased the Subject Property’s land component in 2010 for \$100,000.
11. The Subject Property’s PRF indicates that it has a 2616 sq. ft. basement, 60 sq. ft. of which is finished.

12. The Assessment Report indicates that the County Board's determination attributable to the Subject Property's land component for tax year 2013 is based on a sales comparison approach.<sup>1</sup>
13. The Assessment Report indicates that the County Board's determination attributable to the Subject Property's improvement component for tax year 2013 is based on the County Assessor's cost approach mass appraisal model.<sup>2</sup> The PRF contains cost approach information that includes the value assigned to each of the County Assessor's various mass appraisal model characteristics relating to the Subject Property's improvement component for tax year 2013.
14. The Taxpayer submitted a document at the hearing before the Commission that contends that the actual value of the Subject Property was \$357,828 for tax year 2013.
15. In support of his opinion of value, the Taxpayer submitted screenshots from the Douglas County Assessor's website for several market area parcels he asserted were similar to the Subject Property in terms of characteristics (PRFs were not submitted). The Taxpayer also asserted that these parcels were assessed at lower actual values in comparison to the Subject Property.
16. The County Board's Assessment Report contains the PRFs for the Subject Property and three alleged comparable sale properties, none of which are located in Land Economic Area ("LEA") 44775 where the Subject Property is situated.
17. The County Board's Assessment Report states as follows in pertinent part regarding the County Assessor's \$419,100 opinion of value relied upon by the County Board for tax year 2013:

Subject is in newer subdivision with no sales other than land sales. Had to go outside of area to find comparable properties of similar size and on small acreage. The subject has a small finish space in basement, but comparables have large finished basement.

18. The County's Appraiser asserted that a comparison analysis regarding the Taxpayer's alleged comparable properties is limited without the availability of PRFs.

### **STANDARD OF REVIEW**

19. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</sup> "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."<sup>4</sup>

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<sup>1</sup> See, Assessment Report, pg. 8.

<sup>2</sup> See, Assessment Report, pgs. 8, 11 – 12 (Cost Detail: \$402,635 "Total Replacement Cost New" + \$6,157 "Add On Value" = \$408,792 x .74 "Neighborhood Adjustment" = \$302,500 improvement value).

<sup>3</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

<sup>4</sup> *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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.”<sup>5</sup> 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.”<sup>6</sup>
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.<sup>7</sup>
22. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

### 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.<sup>9</sup>
24. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>10</sup>
25. “Actual value, market value, and fair market value mean exactly the same thing.”<sup>11</sup>
26. 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.<sup>12</sup>
27. All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>13</sup>
28. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>14</sup>
29. 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

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<sup>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</sup> *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).

<sup>10</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

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

<sup>12</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

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

<sup>14</sup> 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.<sup>15</sup>

## VALUATION ANALYSIS

30. The Taxpayer derived an opinion of value in the amount of \$357,828 for the Subject Property for tax year 2013 based on an analysis of the assessed values of several market area Ranch-style homes.
31. The Taxpayer's opinion of value can best be described as an attempted sales comparison approach.
32. An opinion of value under the sales comparison approach is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property,<sup>16</sup> and use of a systematic procedure.<sup>17</sup> This approach also requires that analyzed properties must be comparable to the subject property, and receive adjustments for any differences.<sup>18</sup>
33. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.<sup>19</sup> If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.<sup>20</sup>
34. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>21</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>22</sup>
35. The Taxpayer's opinion of value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the improvement component situated on the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.<sup>23</sup> Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
36. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.<sup>24</sup> Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual

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<sup>15</sup> Neb. Rev. Stat. § 77-112 (Reissue 2009).

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

<sup>17</sup> *Id.* at 301-302.

<sup>18</sup> *Id.*

<sup>19</sup> 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).

<sup>20</sup> 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).

<sup>21</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>22</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>23</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>24</sup> See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”<sup>25</sup>

37. An examination of the properties submitted for consideration by the Taxpayer is limited because PRFs were not presented to the Commission. Additionally, the Taxpayer’s opinion of value does not use sales prices exclusively, but instead relies upon an examination of averaged assessed values. The Taxpayer’s approach for determining the actual value of the Subject Property’s land component does not meet the requirements of the sales comparison approach.<sup>26</sup>
38. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer’s \$357,828 opinion of value because it is not based on a professionally accepted appraisal approach.
39. The Taxpayer also derived an opinion of value in the amount of \$90,000 for the Subject Property’s land component for tax year 2013 based on an analysis of assessed values of the above-referenced market area parcels. That Taxpayer’s analysis determined that the average assessed value for a “Walkout” lot amounted to \$100,107 in the Subject Property’s market area for tax you 2013. Based on the Taxpayer’s experience as a licensed real estate broker, he adjusted the land component to \$90,000 as a part of his overall \$357,828 opinion of value because the Subject Property does not include this Walkout characteristic.
40. The County’s Appraiser has indicated that a “Walkout” characteristic can contribute to value under the “Site” valuation technique for purposes of valuing the land component of improved real property. Because the Taxpayer’s \$90,000 opinion of value for the Subject Property’s land component is based on an analysis of averaged assessed values of improved properties, and because PRFs for the parcels submitted for consideration were not presented for analysis, the Commission is not persuaded that it amounts to clear and convincing evidence that the County Board’s \$116,600 land determination was unreasonable or arbitrary for tax year 2013. The Commission notes that the land component of the parcel submitted for consideration by the Taxpayer located at 10235 N. 185<sup>th</sup> Circle is assessed similarly in comparison to the Subject Property (i.e., \$48,000 per acre, or \$1.10 per square foot).
41. The Assessment Report indicates that the County Board adopted the County Assessor’s opinion of value which was calculated through the use of a cost approach. The cost approach is a statutorily permissible method for determining the actual value of real property for property tax purposes.<sup>27</sup>
42. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board’s \$419,100 total land and improvement determination was unreasonable or arbitrary for tax year 2013.
43. The Commission notes that the Order for Single Commissioner Hearing issued to the parties in this matter at least 30 days prior to the hearing provides as follows:

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<sup>25</sup> *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13<sup>th</sup> ed. 2008).

<sup>26</sup> See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13<sup>th</sup> ed. 2008).

<sup>27</sup> See, Neb. Rev. Stat. §77-112 (Reissue 2009).

**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.

## GENERAL EQUALIZATION LAW

44. "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."<sup>28</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>29</sup> 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.<sup>30</sup>
45. 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.<sup>31</sup>
46. 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.<sup>32</sup> 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.<sup>33</sup>
47. The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>34</sup> 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]."<sup>35</sup> "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."<sup>36</sup>
48. "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."<sup>37</sup>
49. "Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief."<sup>38</sup>

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<sup>28</sup> *Neb. Const.*, Art. VIII, §1.

<sup>29</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>30</sup> *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).

<sup>31</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>32</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>33</sup> *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).

<sup>34</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>35</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>36</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>37</sup> *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>38</sup> *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

## EQUALIZATION ANALYSIS

50. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;<sup>39</sup> 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;<sup>40</sup> or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.<sup>41</sup>
51. For equalization analysis purposes, the Taxpayer submitted screenshot from the Douglas County Assessor's website for several parcels located in the Subject Property's subdivision ( PRFs were not submitted).
52. In substantial part because PRFs were not presented at the hearing, the Commission finds that there is not clear and convincing evidence that the Taxpayer's parcels submitted for consideration are substantially similar to the Subject Property for purposes of equalization review/relief.<sup>42</sup>
53. 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 assessed to market value 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.
54. In substantial part because PRFs were not presented at the hearing, together with a review of documents and statements submitted at the hearing, the Commission further finds that there is not clear and convincing evidence that characteristics of the parcels submitted for consideration by the Taxpayer were misclassified for purposes of equalization review/relief.

## CONCLUSION

55. 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.
56. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary and the decision of the County Board should be affirmed.

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<sup>39</sup> See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>40</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>41</sup> See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

<sup>42</sup> As stated previously, the land component of the parcel submitted for consideration by the Taxpayer located at 10235 N. 185<sup>th</sup> Circle is assessed similarly in comparison to the Subject Property (i.e., \$48,000 per acre, or \$1.10 per square foot).

**ORDER**

IT IS ORDERED THAT:

1. The Decision of the Douglas 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:

Land	\$116,600
<u>Improvements</u>	<u>\$302,500</u>
Total	\$419,100

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 (2014 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 July 1, 2015.

Signed and Sealed: July 1, 2015.

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Thomas D. Freimuth, Commissioner