

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John S. Thomas,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 13R 550 & 14R 383

Decision and Order Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The parcel under appeal (herein referred to as the “Subject Property”) is improved with a 3,413 sq. ft. residence located at 7810 Hickory Circle, Omaha, Douglas County, Nebraska. The Subject Property’s legal description appears in the Case Files.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$471,900 for tax years 2013 and 2014.
3. John S. Thomas (herein referred to as the “Taxpayer”) protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested a valuation of \$379,000 for tax year 2013 and \$365,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$471,900 for tax years 2013 and 2014.
5. The Taxpayer appealed the determinations of the County Board for tax years 2013 and 2014 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on June 3, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. John S. Thomas, the Taxpayer, 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 Files (“PRF”) contained in the Assessment Reports submitted by the County Board at the hearing indicate that the County Board’s \$471,900 determination for tax years 2013 and 2014 includes \$131,100 for land and \$340,800 for the improvement component.
10. The PRFs indicate that the Taxpayer purchased the Subject Property for \$350,000 in November 2002. Since this purchase, the Taxpayer stated that he has installed new carpet and new heating, ventilating, and air-conditioning in the Subject Property’s improvement component.
11. The PRFs indicate that the County Assessor determined that the Subject Property’s improvement component is “Average” in terms of condition and “Good” in terms of quality for tax years 2013 and 2014. The Taxpayer agreed with the County Assessor’s determination regarding condition.

12. The Assessment Reports indicate that the County Board’s determinations attributable to the Subject Property’s improvement component for tax years 2013 and 2014 are based on the County Assessor’s sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.¹ The 2014 Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value assigned to each of the various County Assessor mass appraisal model characteristics relating to the Subject Property’s improvement component for tax years 2013 and 2014.
13. The Taxpayer submitted a verbal opinion of value in the amount of \$419,000 for tax years 2013 and 2014 at the hearing before the Commission. The Taxpayer did not submit an appraisal at the hearing before the Commission.
14. In support of his opinion of value, the Taxpayer submitted screenshots from the Douglas County Assessor’s website for six parcels he asserted were similar to the Subject Property in terms of characteristics (the Taxpayer also submitted listing information for some of these parcels, but no PRFs were submitted for any of the properties). The Taxpayer also asserted that these parcels sold/listed or were assessed at lower actual values in comparison to the Subject Property.
15. The Taxpayer stated that the Subject Property is located in the Westside School District (i.e., “District 66”), which is a desirable area of Omaha. The Taxpayer also indicated that the six parcels he submitted for consideration are located in District 66.
16. The County Board’s Assessment Reports each contain the PRF for the Subject Property, together with its valuation history and the County Board’s Referee Report for each respective tax year. The 2013 Assessment Report also contains a list of several parcels that sold in Neighborhood 49 from September 30, 2010 through September 30, 2012, and the 2014 Assessment Report contains a list of Neighborhood 49 sales from September 30, 2011 through September 30, 2013 – the Subject Property is located in Neighborhood 49 according to its PRF for tax year 2013 and 2014 (referenced as “Nbhd 49” in the PRFs).
17. The County’s Appraiser asserted that a comparison analysis regarding the Taxpayer’s alleged comparable properties is limited without the availability of PRFs. The County’s Appraiser also stated that the circumstances relating to the sale/listing of some of the Taxpayer’s parcels submitted for consideration were unknown because PRFs were not submitted.
18. The County’s Appraiser asserted that the parcels submitted by the Taxpayer were not comparable to the Subject Property for equalization analysis purposes due to variation in terms of characteristics.

STANDARD OF REVIEW

19. The Commission’s review of the determination of the County Board of Equalization is de novo.² “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 *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

² 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”³

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.”⁴ 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.”⁵
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.⁶
22. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

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.⁸
24. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
25. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁰
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.¹¹
27. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
28. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
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

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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 Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁰ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹¹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹³ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁴

VALUATION ANALYSIS

30. The Taxpayer's opinion of value in the amount of \$419,000 for the Subject Property for tax years 2013 and 2014 is based on the following: (1) a combination of assessed values and sale/listing prices of alleged comparable properties; (2) consideration of his \$350,000 purchase in 2002; (3) consideration of real estate sales trends/developments over the period 2002 to 2014, including the 2007 – 2008 economic crisis; and (4) exterior/interior deferred maintenance (see Taxpayer's 2014 Property Valuation Protest submitted to the County Board).
31. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁵ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁶
32. The Taxpayer's opinion of value can best be described as an attempted sales comparison approach. 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,¹⁷ and use of a systematic procedure.¹⁸ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.¹⁹
33. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.²⁰ If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.²¹
34. The Taxpayer's opinion of value was determined in part by a combination of unadjusted sales/listings and assessed values of six parcels.
35. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the assessed and/or sale/listing values of the parcels submitted for consideration meet the requirements of the sales comparison approach.

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2009).

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

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹⁷ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

¹⁸ *Id.* at 301-302.

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).

36. Further, the comparison of assessed values of parcels is not recognized as an appropriate approach under Nebraska Statutes.²² The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²³
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/listing prices exclusively, but instead relies in part upon an examination of assessed values.
38. The Taxpayer's approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property.²⁴ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal technique 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.
39. The Commission finds that the Taxpayer's approach for determining the actual value of the Subject Property does not meet the requirements of the sales comparison approach.²⁵
40. With respect to the Taxpayer's deferred maintenance assertion, the Commission notes that the County Assessor assigned an Average condition rating to the Subject Property. The Taxpayer agreed with this rating at the hearing before the Commission. The County's Appraiser stated that this Average rating is based on an exterior inspection, and that the County Assessor's Office has not performed a recent interior inspection. Inferior condition issues can be addressed via the assignment of a rating less than Average, which can be supported by an inspection disclosing exterior and/or interior deferred maintenance.
41. The 2013 and 2014 Assessment Reports indicate that the County Board adopted the County Assessor's \$471,900 opinion of value which was calculated through the use of a sales comparison approach. The sales comparison approach is a statutorily permissible method for determining the actual value of real property for property tax purposes.²⁶
42. Based on a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's \$419,000 opinion of value does not constitute clear and convincing evidence that the County Board's \$471,900 determination for tax years 2013 and 2014 is arbitrary or unreasonable.

GENERAL EQUALIZATION LAW

43. "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."²⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

²² See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²³ See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

²⁴ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

²⁶ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁷ *Neb. Const.*, Art. VIII, §1.

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁹

44. 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.³⁰
45. 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.³¹ 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.³²
46. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³³ 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].”³⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁵
47. “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.”³⁶
48. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”³⁷

EQUALIZATION ANALYSIS

49. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁸ 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;³⁹ 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.⁴⁰
50. For equalization analysis purposes, the Taxpayer submitted listing information and screenshots from the Douglas County Assessor’s website for parcels in close proximity to the Subject Property.

²⁹ *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).

³⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³² *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).

³³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁵ *Id.* at 673, 94 N.W.2d at 50.

³⁶ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁷ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

³⁸ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴⁰ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

51. 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:

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.*

52. A review of the screenshots submitted by the Taxpayer indicates that the properties are not truly comparable with the Subject Property. The improvement characteristics of these properties vary in comparison to the Subject Property including one or more of the following features: quality, condition, size, and style. The Commission notes that its equalization analysis is limited because PRFs for the parcels submitted by the Taxpayer for consideration were not presented.
53. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review/relief.
54. 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.
55. Based on a review of the Taxpayer's nine screenshots submitted for consideration, 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 these parcels were misclassified for purposes of equalization review/relief.

CONCLUSION

56. 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.
57. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determinations of the County Board are unreasonable or arbitrary and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2013 and 2014 are affirmed.

2. The taxable value of the Subject Property for tax years 2013 and 2014 is:

Land	\$131,100
<u>Improvements</u>	<u>\$340,800</u>
Total	\$471,900

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 years 2013 and 2014.
7. This Decision and Order is effective on July 10, 2015.

Signed and Sealed: July 10, 2015.

Thomas D. Freimuth, Commissioner