

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lloyd L. Eggleston,
Appellant,

Case No: 14R 142

v.

Decision and Order Reversing
County Board of Equalization

Custer County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The 14.90-acre parcel under appeal (herein referred to as the “Subject Property”) is improved with a 1,800 sq. ft. residence located in Custer County, Nebraska. The Subject Property’s legal description is contained in the Case File.
2. The Custer County Assessor (herein sometimes referred to as the “Assessor”) assessed the Subject Property at \$114,043 for tax year 2014.
3. Lloyd L. Eggleston (herein referred to as the “Taxpayer”), protested this value to the Custer County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value in the amount of \$70,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$114,043 for tax year 2014.
5. The Taxpayer appealed the determination of the County Board for tax year 2014 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on June 16, 2015, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Thomas D. Freimuth.
7. Lloyd & Sandra Eggleston appeared at the hearing.
8. Glenn Clark, Deputy Custer County Attorney, and Connie Braithwaite, Custer County Assessor, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record File (“PRF”) for the Subject Property contained in the 2014 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$114,043 determination for tax year 2014 includes \$26,935 for land and \$87,108 for the improvement component.
10. The Taxpayer asserted that the Subject Property should be valued at \$70,000 for tax year 2014, which approximates the County’s assessment for tax year 2012.¹ In support of this assertion, the Taxpayer submitted analysis of the assessed values of several properties in Custer County for tax years 2012 through 2014.

¹ The documents submitted at the hearing before the Commission indicate that the County assessed the Subject Property based on a valuation of \$70,297 for tax year 2012.

11. The Taxpayer asserted that these properties are similar to the Subject Property. The Taxpayer also asserted that these parcels were assessed at lower actual values in comparison to the Subject Property. The Taxpayer did not submit PRFs or an appraisal in support of its assertion that the Subject Property should be valued at \$70,000 for tax year 2014.
12. The Taxpayer further asserted that the County Board overvalued the Subject Property's land component for tax year 2014. In support of this assertion, the Taxpayer stated that 2.4 acres assessed as "3D1" dryland at \$1,530 per acre have never been used as cropland. As a result, the Assessor offered a revised opinion of value based on designation of these 2.4 acres as "3G1" grassland at \$690 per acre.
13. The information submitted at the hearing indicates that the Taxpayer listed the Subject Property for \$205,000 in 2012, and that the parcel was removed from the market approximately six months thereafter.
14. The Subject Property's PRF indicates that the cost approach is the basis of the Assessor's \$87,108 opinion of value for the improvement component relied upon by the County Board for tax year 2014. The Assessor indicated that this cost valuation is derived from the Marshall & Swift valuation service, and that she derived some of the Subject Property's characteristics from the Taxpayer's \$205,000 listing documents published in 2012.
15. The Subject Property's PRF indicates that the Assessor performed an exterior inspection of the Subject Property in 2014. The Assessor stated at the hearing that the Taxpayer declined an interior inspection at that time.
16. The Assessment Report indicates that the County Board's determination attributable to the Subject Property's land component for tax year 2014 is based on the County Assessor's sales comparison approach model derived from market area arm's-length sales.
17. The County Board's Assessment Report contains the PRFs for the Subject Property and three parcels in Custer County designated as either "Rural" or "Suburban" in terms of "Location" and "Single Family" in terms of "Use" -- in contrast, the PRF for the Subject Property provides that the Assessor treats it as "Rural" in terms of "Location" and "Agricultural" in terms of "Use."
18. The Assessor indicated that the parcels submitted by the Taxpayer were not comparable to the Subject Property without adjustments, and that a comparison analysis is limited without the availability of PRFs and without interior inspection of the Subject Property.

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 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

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).

³ *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.”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 100% of actual value for purposes of taxation.¹³
29. Agricultural land and horticultural land shall be valued for purposes of taxation at 75% of its actual value.¹⁴
30. Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.¹⁵
31. Nebraska Statutes section 77-112 defines actual value as follows:

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. Custer 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. Custer 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).

¹⁴ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

¹⁵ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

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.¹⁶

VALUATION ANALYSIS

32. As indicated above, the County Assessor agreed that the Subject Property characteristic concerning classification of 2.4 acres as 3D1 dryland was not correct for tax year 2014.
33. Based on the documents and statements submitted at the hearing, the Commission finds that it was unreasonable or arbitrary for the County Board to adopt the County Assessor's opinion of value for the Subject Property due to this incorrect 2.4-acre 3D1 dryland classification, and that these acres should be classified as 3G1 grassland at \$690 per acre for tax year 2014.
34. The Taxpayer asserted that the Subject Property should be valued at \$70,000 for tax year 2014, which approximates its \$70,297 assessed value for tax year 2012. In support of this assertion, the Taxpayer submitted analysis of the assessed values of several properties in Custer County for tax years 2012 through 2014.
35. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁷ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁸
36. The Taxpayer's use of the assessed values of the above-referenced parcels to support his \$70,000 valuation assertion for tax year 2014 can best be described as an attempted sales comparison approach.
37. 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,¹⁹ and use of a systematic procedure.²⁰ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.²¹
38. A sale property is comparable to a parcel under consideration for assessment purposes

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

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁹ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

²⁰ *Id.* at 301-302.

²¹ *Id.*

when it possesses similar physical, functional, and locational characteristics.²² If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.²³

39. The Taxpayer's \$70,000 opinion of value was determined in part by an analysis of the assessed values of several Custer County parcels.
40. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the assessed values of the parcels submitted for consideration meet the requirements of the sales comparison approach.
41. Further, the comparison of assessed values of parcels is not recognized as an appropriate approach under Nebraska Statutes.²⁴ The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²⁵
42. 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.
43. The Taxpayer's approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property.²⁶ 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.
44. 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.²⁷
45. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's \$70,000 asserted opinion of value because it is not based on a professionally accepted appraisal approach.
46. The Commission notes that the Taxpayer asserted that the Subject Property was overvalued for tax year 2014 because the County inappropriately assessed it as an "acreage" at 100% of actual value as opposed to 75% of actual value as agricultural land. In support of this assertion, and for comparison purposes, the Taxpayer stated that unimproved agricultural land (Parcel No. 001316900 – PRF submitted by Assessor) he owns adjacent to the Subject Property is assessed lower on a per acre basis. The Subject Property's PRF indicates that the County Assessor values the parcel based on agricultural use and provides an inventory of the soil types and associated Land Capability Groups relating to the assessment of 12.9 acres of agricultural land. With the exception of the misclassification of 2.4 acres discussed above and further below, this inventory indicates that the Subject Property's 12.9 acres of agricultural land is appropriately assessed preferentially at 75% of actual value, similar to the assessment of Parcel No. 001316900. The Subject Property's PRF also indicates that the Subject Property's one-acre homesite

²² 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).

²³ 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).

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

²⁵ See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

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

²⁷ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

and one-acre farmsite are appropriately assessed at 100% of actual value according to the Assessor's improved agricultural land model, as required under Nebraska Statutes section 77-1359.²⁸ Based on a review of the documents and statements submitted at the hearing, the Commission finds that the Taxpayer's "acreage" assertion does not have merit.

47. The 2014 Assessment Report indicates that the County Board adopted the County Assessor's \$87,108 opinion of value with respect to the Subject Property's improvement component, 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.²⁹ Based on a review of the documents and statements submitted at the hearing, and for the reasons discussed above, the Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's determination with respect to the Subject Property's improvement component was arbitrary or unreasonable for tax year 2014.
48. With respect to the land component, the documents and statements submitted at the hearing indicate that the County Board's determination of assessed value for tax year 2014 was based on incorrect 3D1 dryland classification of 2.4 Subject Property acres. The Assessor's revised opinion of value of the Subject Property's land component based on reclassification of these acres to 3G1 grassland at \$690 per acre is \$24,919 for tax year 2014.³⁰
49. The Commission finds that the actual value of the Subject Property for tax year 2014 should be \$112,017 (\$24,919 Land + \$87,108 Improvement = \$112,027).

GENERAL EQUALIZATION LAW

50. "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."³¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³² 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.³³
51. 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.³⁴
52. 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

²⁸ See, Neb. Rev. Stat. §77-1359 (Reissue 2009).

²⁹ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

³⁰ The Subject Property's PRF indicates that classification of 2.4 acres as 3D1 dryland at \$1,530 per acre generated a \$3,672 total assessment for these acres for tax year 2014. Reclassification of these acres to 3G1 at \$690 per acre grassland lowers this assessment by \$2,016 from \$3,672 to \$1,656 (2.4 acres x \$690 per acre = \$1,656; \$3,672 - \$1,656 = \$2,016 reduction). Thus, the Assessor's \$24,919 revised opinion of value for the Subject Property's land component for tax year 2014 is calculated as follows: \$26,935 (2014 County land assessment) - \$2,016 (reclassification reduction) = \$24,919.

³¹ *Neb. Const.*, Art. VIII, §1.

³² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³³ *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).

³⁴ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

uniformity.³⁵ 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.³⁶

53. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁷ 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].”³⁸ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁹
54. “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.”⁴⁰
55. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”⁴¹

EQUALIZATION ANALYSIS

56. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴² 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;⁴³ 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.⁴⁴
57. For equalization relief purposes, the Taxpayer submitted analysis of the assessed values of several properties in Custer County for tax years 2012 through 2014. The Taxpayer asserted that these properties are similar to the Subject Property. The Taxpayer also asserted that these parcels were assessed at lower actual values in comparison to the Subject Property.
58. The Taxpayer did not submit Property Record Files (“PRFs”) for the properties submitted for consideration. As a result, the Commission is unable to determine (1) whether the Subject Property and the properties submitted for consideration were similarly situated; or (2) whether the assessed to actual value ratio for the Subject Property was excessive when compared with the properties submitted for consideration; or (3) whether the characteristics of the Subject Property or other properties were misclassified.

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

³⁶ *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).

³⁷ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁹ *Id.* at 673, 94 N.W.2d at 50.

⁴⁰ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

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

⁴² See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴³ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴⁴ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

59. 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.*

60. The Commission finds that the Taxpayer did not provide clear and convincing evidence to obtain equalization relief for tax year 2014.

CONCLUSION

61. 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.
62. The Taxpayer has 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 vacated and reversed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Custer County Board of Equalization determining the taxable value of the Subject Property for tax year 2014 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 24,919
<u>Improvements</u>	<u>\$ 87,108</u>
Total	\$ 112,027

3. This Decision and Order, if no further action is taken, shall be certified to the Custer County Treasurer and the Custer 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 2014.
7. This Decision and Order is effective on July 24, 2015.

Signed and Sealed: July 24, 2015.

Thomas D. Freimuth, Commissioner