

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Missouri Valley Hunt Club,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13C 545

Decision and Order Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The 39.39-acre commercial parcel under appeal (herein referred to as the “Subject Property”) is improved with a 768 sq. ft. clubhouse and two small storage sheds located in Douglas County, Nebraska. The Subject Property’s legal description is as follows: LANDS SEC-TWN-RGE 12-15-09 -EX S 17 N 50 FT- W 247.5 FT GOV LOT 1 & -EX IRREG S 27 N 60 FT- IRREG E 758 FT GOV LT 2 & ACCRETION ADJ APPROX 39.39 AC.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$256,300 for tax year 2013.
3. William J. Blake, President of the Missouri Valley Hunt Club (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 assessed value in the amount of \$131,356 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$256,300 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board for tax year 2013 to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on May 19, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference RM 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. William J. Blake appeared at the hearing on behalf of the Taxpayer.
8. Stan Mlotek, 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 \$256,300 determination for tax year 2013 includes \$236,300 for land and \$20,000 for the improvement component.
10. The Taxpayer asserted that the Subject Property should be valued at \$131,400 for tax year 2013. In support of this assertion, the Taxpayer presented a one-page document at the hearing before the Commission indicating that the County determined that the

assessed value of the Subject Property amounted to \$131,400 for tax years 2014 and 2015.

11. 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 the County Assessor's sales comparison approach model derived from market area arm's-length sales. The Assessment Report contains a document entitled "Land Value" that sets forth information concerning three sales that the County asserts support its \$6,000 per acre assessment of the Subject Property's 39.39-acre land component for tax year 2013.
12. The County Board's Assessment Report contains the PRFs for the Subject Property and three alleged comparable properties. The Taxpayer did not submit PRFs or an appraisal in support of its assertion that the Subject Property should be valued at \$131,400 for tax year 2013.

STANDARD OF REVIEW

13. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²
14. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
15. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

GENERAL VALUATION LAW

17. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸
19. "Actual value, market value, and fair market value mean exactly the same thing."⁹
20. 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.¹⁰
21. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
22. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
23. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

VALUATION ANALYSIS

24. The Taxpayer asserted that the Subject Property should be valued at \$131,400 for tax year 2013, which is equal to its assessed value for tax years 2014 and 2015.
25. Information contained in the County's Assessment Report and statements at the hearing before the Commission indicate that the County Board lowered the County Assessor's \$256,300 notice value for tax years 2014 and 2015 to \$131,400 for each of those years based on the assessed value of an alleged comparable property. A PRF for this alleged comparable property or other information concerning the basis of County Board's reduction for tax years 2014 and 2015 was not presented to the Commission.
26. The County's representative, Mr. Mlotek, stated that the alleged comparable property relied upon by the County Board for tax years 2014 and 2015 is not comparable to the Subject Property (the Assessment Report's "Account Notes" are consistent with Mr. Mlotek's statement).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

27. The Taxpayer's use of the assessed value of the above-referenced alleged comparable parcel to support its \$131,400 valuation assertion for tax year 2013 can best be described as an attempted sales comparison approach.
28. 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.¹⁴ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.¹⁵ This process requires an analysis of sales prices, not assessed values.¹⁶ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.¹⁷
29. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁸ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁹ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
30. The Taxpayer did not submit a PRF for the alleged comparable parcel, so the Commission is unable to compare its characteristics with the Subject Property. Additionally, the Taxpayer did not use sales prices exclusively, but instead relied upon an examination of assessed values.²⁰ The Taxpayer's approach for determining the actual value of the Subject Property's improvement component does not meet the requirements of the sales comparison approach.²¹
31. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's \$131,400 asserted opinion of value because it is not based on a professionally accepted appraisal approach.
32. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's \$256,300 determination was unreasonable or arbitrary for tax year 2013.

GENERAL EQUALIZATION LAW

33. "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

¹⁴ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

¹⁵ *Id.* at 301-302.

¹⁶ *Id.*

¹⁷ *Id.*

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

¹⁹ *Id.*

²⁰ *See, Id.*

²¹ *See, The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

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).

34. 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
35. 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
36. 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 [sic].”²⁹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁰
37. “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
38. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”³²

EQUALIZATION ANALYSIS

39. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³³ 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;³⁴ 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.³⁵
40. The County’s Assessment Report generally references documentation submitted by the Taxpayer for consideration at the protest level before the County Board in 2013 to support the Taxpayer’s assertion that the Subject Property parcel was not equalized with other properties in Douglas County.³⁶ The Taxpayer, however, did not provide the Property Record Files (“PRFs”) for these alleged comparable properties. As a result, the

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).

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

³² *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

³³ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁵ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

³⁶ The Taxpayer's equalization documentation referenced in the County's Assessment Report for the Subject Property parcel was not received by the Commission.

Commission is unable to determine (1) whether the Subject Property and the alleged comparable were similarly situated; or (2) whether the assessed to actual value ratio for the Subject Property was excessive when compared with the alleged comparable property; or (3) whether the Subject Property or other properties were misclassified.

41. The Commission notes that section 6 of 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.*

42. The Commission finds that the Taxpayer did not provide clear and convincing evidence to obtain equalization relief for tax year 2013.

CONCLUSION

43. 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.
44. 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.

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	\$ 236,300
Improvements	\$ 20,000
Total	\$ 256,300
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 June 19, 2015.

Signed and Sealed: June 19, 2015.

Thomas D. Freimuth, Commissioner