

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith A. Baker,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13R 074 & 14R 370

Decision and Order Reversing
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The parcel under appeal (herein referred to as the “Subject Property”) is improved with a 1,646 sq. ft. residence located at 9810 North 31st Street, 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 \$184,600 for tax year 2013 and \$179,700 for tax year 2014.
3. Keith A. Baker (herein referred to as the “Taxpayer”) protested these values to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax years 2013 and 2014.
4. The County Board determined that the taxable value of the Subject Property was \$184,600 for tax year 2013 and \$179,700 for tax year 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 May 20, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference RM 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Keith A. Baker, 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 File (“PRF”) contained in the 2013 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$184,600 determination for tax year 2013 includes \$10,800 for land and \$173,800 for the improvement component.
10. The PRF contained in the 2014 Assessment Report submitted by the County Board at the hearing indicates that the County Board’s \$179,700 determination for tax year 2014 includes \$10,800 for land and \$168,900 for the improvement component.
11. 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 Assessment Reports contain 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.

12. The PRF for tax year 2013 states that the \$173,800 in value attributable to the improvement component is based on a determination that the Subject Property's gross living area ("GLA") amounted to 1,790 sq. ft. for tax year 2013. The PRF for tax year 2014 listed the Subject Property's GLA as 1,646 sq. ft.. The Taxpayer and the County's representative, Mr. Corcoran, agreed that the correct Subject Property GLA was 1,646 sq. ft. for tax years 2013 and 2014.
13. Based on the documents and statements submitted at the hearing before the Commission, Mr. Corcoran of the County Assessor's Office offered a revised opinion of value for the improvement component in the amount of \$168,900 for tax year 2013, which reflects the 1,646 sq. ft. corrected GLA.² Consequently, Mr. Corcoran's revised opinion of value for the Subject Property is \$179,700 for tax year 2013 (Land \$10,800 + Improvement \$168,900 = \$179,700).
14. The Taxpayer presented PRFs for two residential properties in support of his assertion that the Subject Property was overvalued for tax years 2013 and 2014. In further support of this assertion, the Taxpayer submitted an analysis of the assessments of 27 properties north of Interstate 680 in the area known as Ponca Hills where the Subject Property is located.
15. The County Board's Assessment Reports each contain the PRFs for the Subject Property and three alleged comparable properties.³ Each Assessment Report also contains an identical list of six parcels that sold in Land Economic Area ("LEA") 12420 from July 1, 2011 through May 19, 2015. The 2013 Assessment Report states as follows: "Limited Ranch sales in area, went outside neighborhood for comparables[.]"
16. The 2013 Assessment Report states as follows: "Limited Ranch sales in area, went outside neighborhood for comparables[.]"

STANDARD OF REVIEW

17. 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 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

¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

² See, Assessment Reports for tax years 2013 and 2014.

³ See, Assessment Report.

⁴ 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).

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

18. 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
19. 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
20. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

GENERAL VALUATION LAW

21. 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
22. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹
23. “Actual value, market value, and fair market value mean exactly the same thing.”¹²
24. 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.¹³
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁴
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁵
27. 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

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

¹² *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹³ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁴ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁵ 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.¹⁶

VALUATION ANALYSIS

28. The Taxpayer's assertion that the characteristics of the Subject Property are not correct for tax year 2013 is supported by the Mr. Corcoran's revised opinion of value.
29. The Commission finds that Mr. Corcoran revised opinion of value together with the submissions and statements in the hearing constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary for tax year 2013.
30. The Commission finds that Mr. Corcoran's \$179,700 revised opinion of value constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

GENERAL EQUALIZATION LAW

31. "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."¹⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ 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.¹⁹
32. 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.²⁰
33. 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.²¹ 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.²²
34. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²³ 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

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

¹⁷ *Neb. Const.*, Art. VIII, §1.

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁹ *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).

²⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

- [sic].”²⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁵
35. “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.”²⁶
36. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”²⁷

EQUALIZATION ANALYSIS

37. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁸ 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;²⁹ 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.³⁰
38. For equalization analysis purposes, the Taxpayer submitted PRFs for two residential properties in close proximity to the Subject Property, located at 9715 North 31st Street (immediately across the street from the Subject Property situated at 9810 North 31st Street) and 9511 North 31st Street.
39. The Taxpayer also submitted an analysis of the assessments of 27 properties (including the two above-referenced parcels) north of Interstate 680 in the area known as Ponca Hills where the Subject Property is located. The Taxpayer’s analysis indicates that the average assessment of these properties for tax year 2013 amounted to \$80.24 per square foot, while the Subject Property was assessed at \$112.15 for that same year. The Taxpayer did not submit PRFs for 25 of these 27 properties.
40. The County’s representative acknowledged that the property located at 9715 North 31st Street is similar to the Subject Property. The County’s representative stated he could not fully explain the significant difference in terms of the valuation of the Subject Property in comparison to the 9715 North 31st Street property directly across the street for tax years 2013 and 2014. The County’s representative did state, however, that the parcels are situated in different Land Economic Areas (“LEAs”), which he asserted could explain the difference at least in part.
41. The Commission notes that the PRF for the 9715 North 31st Street property indicates that it is improved with a 1,648 sq. ft. brick home built in 1966, while the PRF for the Subject Property indicates that it is improved with a 1,646 sq. ft. frame-siding residence built in 1968. The Commission also notes that the PRFs for the Subject Property and the 9715 North 31st Street parcel rate both as Average in terms of quality and condition.

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

²⁶ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁷ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

²⁸ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁰ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

42. Based on a review of the PRFs, maps and testimony relating to the Subject Property and the 9715 North 31st Street property, the Commission finds that the parcels are similar in terms of location, size, style (Ranch), age, quality and condition.
43. The Commission finds that the 9715 North 31st Street parcel submitted by the Taxpayer is similarly situated or comparable to the Subject Property for equalization analysis purposes. It follows that, by failing to equalize the Subject Property with the parcel at 9715 North 31st Street on a per square foot valuation basis, the County Board's determinations for tax years 2013 and 2014 were unreasonable or arbitrary because they treat similarly situated properties at materially different levels.³¹
44. In the case where it is determined that the decisions of County Board were unreasonable or arbitrary from an equalization standpoint, the Commission must review the evidence and adopt the most reasonable per square foot value presented.³² The assessed valuation of the 9715 North 31st Street comparable for tax years 2013 and 2014 is \$72 per square foot ($\$118,600 \div 1,648 \text{ sq. ft.} = \72 , rounded). Therefore, the Commission finds that the rounded equalization value of the Subject Property for tax years 2013 and 2014 is \$118,500 ($\$72 \times 1,646 = \$118,500$, rounded).

CONCLUSION

45. 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.
46. The Taxpayer has 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 vacated and reversed.

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

Land	\$ 10,800
Improvements	\$107,700
Total	\$118,500
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.

³¹ See, *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). See also, *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 261 Neb. 130, 621 N.W.2d 518 (2001).

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 June 19, 2015.

Signed and Sealed: June 19, 2015.

Thomas D. Freimuth, Commissioner