

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Charles A. Bojanski,
Appellant,

Case No: 13R 204

v.

Decision and Order Reversing
County Board of Equalization

Douglas County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The parcel under appeal, which is referred to herein as the “Subject Property,” is improved with a 1,165 sq. ft. residence located at 7776 Maywood Street, Ralston, Douglas County, Nebraska. The Subject Property’s legal description is: RALSTON ADD LOT 18 BLOCK 21 E 1/2 LT 17 & ALL LT 18 75 X 120.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$138,400 for tax year 2013.
3. Charles A. Bojanski (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”) for tax year 2013, requesting a valuation in the amount of \$120,296.
4. The County Board determined that the taxable value of the Subject Property was \$138,400 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 22, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference RM 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Charles A. Bojanski 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 \$138,400 determination for tax year 2013 includes \$20,300 for land and \$118,100 for the 1,165 sq. ft. improvement component.
10. The PRF’s sales history indicates that the Taxpayer purchased the Subject Property for \$85,000 on December 31, 2001. The Taxpayer stated that he purchased the Subject Property as a part of a foreclosure transaction, and that he has improved the parcel since 2001.
11. 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 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 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 year 2013.

12. The Market Calculation Detail document for tax year 2013 states that the \$118,100 in value attributable to the improvement component is based on a determination that the Subject Property's characteristics are as follows: (1) 670 sq. ft. basement finish; (2) two bathrooms; (3) 400 sq. ft. carport; (4) 64 sq. ft. wood deck; (5) 1,104 sq. ft. basement block; and (6) "Good" condition rating.
13. The "Account Notes" contained in the Assessment Report indicate that following the 2013 County Board hearing and determination, the County Assessor's Office conducted an inspection of the Subject Property and corrected these characteristics as follows: (1) 720 sq. ft. basement finish; (2) three bathrooms; (3) 288 sq. ft. carport; (4) 144 sq. ft. wood deck; (5) 1,138 sq. ft. basement block; and (6) "Average" condition rating. The Assessment Report contains a revised Market Calculation Detail document reflecting these changes – this document indicates that the Subject Property's improvement component is valued at \$115,100, rounded (as compared to \$118,100 prior to correction).
14. The Taxpayer submitted a document at the hearing before the Commission that contends that the actual value of the Subject Property was \$94,000 - \$97,000 for tax year 2013.
15. In support of his opinion of value, the Taxpayer submitted PRFs for seven parcels on Maywood Street that he asserted were similar to the Subject Property. The Taxpayer also stated that these parcels were assessed at lower actual values in comparison to the Subject Property.
16. The County Board's Assessment Report contains the PRF for the Subject Property and a list of several parcels that sold in Land Economic Area ("LEA") 31980 from July 1, 2011 through May 22, 2015 – the Subject Property is located in LEA 31980 according to its PRF for tax year 2013.
17. The County's Appraiser asserted that the parcels submitted by the Taxpayer were not comparable to the Subject Property without adjustments.

STANDARD OF REVIEW

18. 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

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).

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

19. 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
20. 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
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL VALUATION LAW

22. 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
23. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
24. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁰
25. 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
26. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
28. 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

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 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

29. As indicated above, the Assessment Report's Account Notes and a revised Market Calculation Detail document indicate that the characteristics of the Subject Property are not correct for tax year 2013.
30. Based on these documents, together with the statements submitted at the hearing, the Commission finds that it was unreasonable or arbitrary for the County Board to adopt County Assessor's opinion of value for the Subject Property due to an incorrect condition rating and an incorrect assignment of value to other characteristics for tax year 2013.
31. The Taxpayer derived an opinion of value in the amount of \$94,000 - \$97,000 for the Subject Property for tax year 2013 based on an analysis of assessed values of seven parcels on Maywood Street.
32. The Taxpayer's opinion of value can best be described as an attempted sales comparison approach.
33. 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,¹⁵ and use of a systematic procedure.¹⁶ This approach also requires that analyzed properties must be comparable to the subject property, and receive adjustments for any differences.¹⁷
34. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.¹⁸ If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.¹⁹
35. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.²⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²¹
36. The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach under Nebraska Statutes. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²² Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size

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

¹⁵ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

¹⁶ *Id.* at 301-302.

¹⁷ *Id.*

¹⁸ 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).

¹⁹ 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).

²⁰ Neb. Rev. Stat. §77-112 (Reissue 2009).

²¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

²² See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

of the total adjustments and the reliability of the data and methods used to support the adjustments.”²³

37. An examination of the alleged comparable properties submitted for consideration by the Taxpayer indicate that they are not substantially similar (the Subject Property is a Ranch-style, while six of the seven parcels submitted by the Taxpayer are improved with 1.5-story homes and the other is improved with a Multi-level home). Additionally, the Taxpayer’s opinion of value does not use sales prices exclusively, but instead relies in part upon an examination of assessed values. The Taxpayer’s approach for determining the actual value of the Subject Property does not meet the requirements of the sales comparison approach.²⁴
38. The Commission finds that the best evidence of actual value of the Subject Property for tax year 2013 should be \$135,400, which reflects the corrected characteristics referenced above.²⁵

GENERAL EQUALIZATION LAW

39. “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.”²⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁷ 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.²⁸
40. 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.²⁹
41. 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.³⁰ 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.³¹
42. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³² 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

²³ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

²⁴ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

²⁵ The Assessment Report contains a corrected Market Calculation Detail document, which reflects an improvement component valuation in the amount of \$115,100, rounded (\$20,300 Land + \$115,100 Improvement = \$135,400 Actual Value).

²⁶ *Neb. Const.*, Art. VIII, §1.

²⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁸ *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).

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

³⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³¹ *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).

³² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

[sic].”³³ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁴

43. “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.”³⁵
44. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”³⁶

EQUALIZATION ANALYSIS

45. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁷ 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;³⁸ 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.³⁹
46. For equalization analysis purposes, the Taxpayer submitted PRFs for seven parcels on Maywood Street where the Subject Property is located.
47. A review of the PRFs submitted by the Taxpayer indicates that the properties are not truly comparable with the Subject Property. The improvement characteristics of these properties vary significantly in comparison to the Subject Property, especially with respect to size and/or style. A review of the per square foot assessed value is only applicable where properties are substantially similar.
48. The Commission finds that the Taxpayer’s alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review/relief.
49. 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.
50. Based on a review of the Taxpayer’s seven PRFs 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.

³³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁴ *Id.* at 673, 94 N.W.2d at 50.

³⁵ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁶ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

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

³⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁹ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

CONCLUSION

- 51. 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.
- 52. 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 Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is Vacated and Reversed.
- 2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 20,300
<u>Improvements</u>	<u>\$115,100</u>
Total	\$135,400

- 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 24, 2015.

Signed and Sealed: June 24, 2015.

Thomas D. Freimuth, Commissioner