

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Merlin L. Lawrence,
Appellant,

Case No: 13R 525

v.

Decision and Order Affirming
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 2,411 sq. ft. residence located at 19606 Franklin Street, Elkhorn, Douglas County, Nebraska. The Subject Property’s legal description is contained in the Case File.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$339,000 for tax year 2013.
3. Merlin L. Lawrence (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.
4. The County Board determined that the taxable value of the Subject Property was \$339,000 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 21, 2015, at the Omaha State Office Bldg., 1313 Farnam St., Conference RM 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Merlin L. Lawrence 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 \$339,000 determination for tax year 2013 includes \$70,600 for land and \$268,400 for the 2,411 sq. ft. improvement component.
10. 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 a sales comparison approach.
11. The Assessment Report also indicates that the County Board’s determination attributable to the Subject Property’s improvement component for tax year 2013 is based in part 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

12. The Assessment Report further indicates that the County Board's determination attributable to the Subject Property's improvement component for tax year 2013 is based in part on the County Assessor's cost approach mass appraisal model. The PRF contains cost approach information that includes 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.
13. The Taxpayer submitted documentation at the hearing before the Commission that contends that the actual value of the Subject Property's land component was \$55,000 for tax year 2013. The Taxpayer does not dispute that County's improvement component valuation for tax year 2013.
14. In support of his opinion of value, the Taxpayer submitted hand-written information concerning eight vacant parcels in close proximity to the Subject Property that sold in the range of \$36,000 to \$55,000 over the period 2009 to 2013.
15. In further support of his assertion regarding overvaluation of the land component, the Taxpayer submitted a screenshot from the Douglas County Assessor's website for a parcel located at 1606 North 197th Street, which is in close proximity to the Subject Property. The screenshot indicates that the land component of this parcel was assessed at \$62,300 for tax year 2013.
16. The County's Appraiser indicated that the land component of the parcel located at 1606 North 197th Street is assessed at \$62,300 rather than \$70,600 for tax year 2013 because it does not include a "Walkout" characteristic like the Subject Property. The County's Appraiser also indicated that consideration of this "Walkout" characteristic under the "Site" valuation technique is appropriate for purposes of valuing the land component of improved real property.
17. The County Board's Assessment Report contains the PRFs for the Subject Property and three alleged comparable sale properties, two of which are located in Land Economic Area ("LEA") 10993 where the Subject Property is situated.
18. The County's Appraiser asserted that he was unable to opine regarding the eight vacant sale parcels submitted for consideration by the Taxpayer because PRFs were not submitted.

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

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).

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 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

30. The Taxpayer derived an opinion of value in the amount of \$55,000 for the Subject Property's land component for tax year 2013 based on an analysis of eight vacant land sales and the \$62,300 assessment of the parcel located at 1606 North 197th Street.
31. The Taxpayer's opinion of value can best be described as an attempted sales comparison approach.
32. 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
33. 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
34. 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
35. The comparison of assessed values of 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
36. An examination of the alleged comparable 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 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's land component does not meet the requirements of the sales comparison approach.²³
37. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's \$55,000 asserted opinion of value for the Subject Property's land component because it is not based on a professionally accepted appraisal approach.

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).

²³ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

38. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's \$339,000 determination was unreasonable or arbitrary for tax year 2013.
39. 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.*

GENERAL EQUALIZATION LAW

40. "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."²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶
41. 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.²⁷
42. 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.²⁸ 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.²⁹
43. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁰ 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]."³¹ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."³²

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

²⁷ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

44. “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.”³³
45. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”³⁴

EQUALIZATION ANALYSIS

46. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁵ 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;³⁶ 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.³⁷
47. For equalization analysis purposes, the Taxpayer submitted a screenshot from the Douglas County Assessor’s website for a parcel located at 1606 North 197th Street, which is situated in close proximity to the Subject Property (a PRF was not submitted).
48. A review of this screenshot indicates that there is not clear and convincing evidence that the parcel is truly comparable with the Subject Property for equalization review/relief purposes. In this regard, as indicated previously, the County’s Appraiser indicated that this parcel’s land assessment is \$62,300 rather than \$70,600 because it does not include a “Walkout” characteristic like the Subject Property.³⁸
49. The Commission finds that there is not clear and convincing evidence that the Taxpayer’s alleged comparable property is substantially similar to the Subject Property for purposes of equalization review/relief.
50. The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the property submitted for comparison, in order to determine whether the ratio of its assessed to market value 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 property presented for consideration by the Taxpayer.
51. Based on a review of the Taxpayer’s parcel submitted for consideration, together with a review of documents and statements submitted at the hearing, the Commission further

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

³⁴ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

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

³⁶ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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

³⁸ The County Appraiser’s statements at the hearing indicated that consideration of this “Walkout” characteristic under the “Site” valuation technique is appropriate for purposes of valuing the land component of improved real property. The County Board’s Assessment Report contains the PRFs for the Subject Property and three alleged comparable sale properties, two of which are located in Land Economic Area (“LEA”) 10993 where the Subject Property is situated. The Commission notes that the land component of one of these parcels, which is located at 1615 North 196th Street, is valued the same as the Subject Property for tax year 2013 (this parcel is in LEA 10993 and includes the Walkout characteristic like the Subject Property – the other LEA 10993 parcel included in the Assessment Report does not include the Walkout characteristic).

finds that there is not clear and convincing evidence that characteristics of this parcel were misclassified for purposes of equalization review/relief.

CONCLUSION

- 52. 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.
- 53. 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	\$ 70,600
<u>Improvements</u>	<u>\$268,400</u>
Total	\$339,000

- 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