

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Boyd C. Ferguson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13R 458

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 1,200 sq. ft. townhome located at 8655 North 159th Court, Bennington, Douglas County, Nebraska. The Subject Property’s legal description appears in the Case File.
2. The Douglas County Assessor (herein referred to as the “Assessor”) assessed the Subject Property at \$129,200 for tax year 2013.
3. Boyd C. Ferguson (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 \$129,200 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 March 26, 2015, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Boyd C. Ferguson and Donna Ferguson 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 \$129,200 determination for tax year 2013 includes \$22,000 for land and \$107,200 for the 1,200 sq. ft. improvement component.
10. The PRF’s sales history indicates that the Taxpayer purchased the Subject Property for \$129,900 on January 31, 2012.
11. The County’s Assessment Report indicates that the County Board’s \$107,200 determination attributable to the Subject Property’s improvement component for tax year 2013 is based on a cost approach.
12. The Taxpayer submitted a PRF for the Subject Property at the hearing dated January 23, 2014, which sets forth the value of each of the various cost approach characteristics

assigned to the Subject Property's improvement component by the County. This PRF states that the \$107,200 in value attributable to the improvement component is based on a determination that the Subject Property included a fireplace for tax year 2013. The Taxpayer asserted that the Subject Property does not have a fireplace.

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 \$106,100 for tax year 2013, which reflects removal of the cost approach value incorrectly attributed to a fireplace.¹ Consequently, Mr. Corcoran's revised opinion of value for the Subject Property is \$128,100 for tax year 2013 (Land \$22,000 + Improvement \$106,100 = \$128,100).
14. The Taxpayer presented PRFs for three 1,200 sq. ft. townhome properties, which he asserted were substantially similar to the Subject Property, and which are adjacent thereto. These PRFs indicate as follows: (1) all three properties were assessed lower than the Subject Property's \$129,200 valuation for tax year 2013 (\$125,900 assessment for two of the townhomes, and \$128,000 for the other); (2) all three properties were built in either 2010 or 2011, while the Subject Property's improvement component was constructed in 2012; and (3) the sale prices of the three properties range from \$134,900 - \$136,000 (\$134,900 – 2012 sale; \$135,000 – 2010 sale; \$136,000 – 2010 sale).
15. The County did not dispute the Taxpayer's assertion that the three comparable townhome properties were substantially similar to the Subject Property for tax year 2013 purposes.

STANDARD OF REVIEW

16. 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
17. 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

¹ The 2014 PRF for the Subject Property indicates that the County's value attributable to the fireplace amounted to \$1,113, which reflects the PRF's \$1,124 cost approach value assigned to the fireplace, less a .99 Neighborhood adjustment ($\$1,124 - [.99 \times \$1,124] = \$1,113$). Thus, Mr. Corcoran's revised opinion of value for the improvement component is calculated as follows: \$107,200 improvement value - \$1,113 = \$106,087, or \$106,100 rounded.

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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

18. 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
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL VALUATION LAW

20. 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
21. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹
22. “Actual value, market value, and fair market value mean exactly the same thing.”¹⁰
23. 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
24. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
25. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
26. 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.¹⁴

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).

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

VALUATION ANALYSIS

27. The Taxpayer's assertions that the characteristics of the Subject Property are not correct is supported by the Mr. Corcoran's revised opinion of value.
28. 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.
29. The Commission finds that Mr. Corcoran's \$128,100 revised opinion of value constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

GENERAL EQUALIZATION LAW

30. "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."¹⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁶ 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.¹⁷
31. 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.¹⁸
32. 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.¹⁹ 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.²⁰
33. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²¹ 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]."²² "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."²³

¹⁵ *Neb. Const.*, Art. VIII, §1.

¹⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁷ *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).

¹⁸ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹⁹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁰ *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).

²¹ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²³ *Id.* at 673, 94 N.W.2d at 50.

34. “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.”²⁴
35. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”²⁵

EQUALIZATION ANALYSIS

36. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁶ 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;²⁷ 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.²⁸
37. For equalization analysis purposes, the Taxpayer submitted PRFs for three townhome properties adjacent to the Subject Property. The Commission notes that all three properties were assessed lower than the Subject Property’s \$129,200 valuation for tax year 2013 (\$125,900 assessment for two of the townhomes, and \$128,000 for the other).
38. The County’s representative indicated that the \$125,900 assessments for the two substantially similar comparable properties stemmed from an incorrect \$1,894.86 downward adjustment corresponding to the “Concrete Slab” category referenced on the respective PRFs. Consequently, because the Subject Property did not receive this downward adjustment, the County’s representative indicated that equalization principles were not satisfied for tax year 2013.
39. The Nebraska Supreme Court has held: “Misclassifying property may result, . . . in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”²⁹
40. The Commission finds that the County’s classification of the two comparable properties assessed at \$125,900 for tax year 2013 is incorrect due to the \$1,894.86 downward adjustment corresponding to the “Concrete Slab” category.
41. Taxpayers are entitled to uniform and proportionate assessment of property, even though the result may be that it is assessed at less than actual value.³⁰ The Commission does not possess the authority to increase the value of a property not in dispute, and to do so without notice to the other owner would violate the principle of due process. The only available method to address the equalization problem stemming from the misclassification identified herein is to value the Subject Property and the two comparable properties assessed at \$125,900 in a similar manner.

²⁴ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁵ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

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

²⁷ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

²⁸ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

²⁹ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

³⁰ *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).

42. The Commission finds that the County Board's determination of the actual value of the Subject Property for tax year 2013 is unreasonable or arbitrary because misclassifying substantially similar property has resulted in a lack of uniformity and proportionality.³¹
43. The Commission finds that the equalization value of the Subject Property for tax year 2013 is \$126,200 (\$128,100 revised opinion of actual value - \$1,895 adjustment = \$126,205, or \$126,200 rounded).

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	\$ 22,000
Improvements	\$104,200
Total	\$126,200
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 April 29, 2015.

Signed and Sealed: April 29, 2015.

Thomas D. Freimuth, Commissioner

³¹ See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983); *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).