

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Merle Dack
Appellant,

Case No: 13C 003

v.

Decision and Order Affirming County
Board of Equalization

Hitchcock County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a commercial parcel improved with a 2,880 square foot tavern located in Culbertson, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. According to the Form 422 for this case, the Hitchcock County Assessor assessed the Subject Property at \$25,770 for tax year 2013.
3. Merle Dack (herein referred to separately or together as the “Taxpayer”) protested this value to the Hitchcock County Board of Equalization (herein referred to as the “County Board”). According to the 422 the Taxpayer requested an assessed value of \$14,745 for tax year 2013.
4. According to the Form 422 for this case, the County Board determined that the assessed value of the Subject Property was \$25,770 for tax year 2013, and the Property Record Card (herein referred to as “PRC”) submitted by the County at the hearing indicates that this value is allocated as follows: Land \$1,600 + Building \$24,170 = \$25,770.
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 June 16, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Thomas D. Freimuth.
7. Tim Thompson, the Taxpayer’s attorney, appeared at the hearing. Merle Dack, the Taxpayer, was also present at the hearing.
8. D. Eugene Garner, the Hitchcock County Attorney, was present for the County Board. Judy McDonald, the Hitchcock County Assessor, Cindy McCorkle, Deputy Hitchcock County Assessor, and Mark Stanard, a contract appraiser for Hitchcock County, were also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The PRC contains the following Subject Property valuation history:

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$1,600	\$24,170	\$25,770
2012	\$1,600	\$13,145	\$14,745
2011	\$2,400	\$13,145	\$15,545

10. The PRC contains account notes at the bottom of page 1 that set forth a summary of the actions of the County Assessor from December 2012 through the County Board's final \$25,770 determination in July 2013.
11. The Taxpayer provided the Commission with PRCs for three alleged comparable properties (Frank's Bar; Whistle Stop; and Hillside Perk) in Hitchcock County, together with a chart analyzing the assessment of these parcels in comparison to the Subject Property.
12. The Taxpayer asserts that the Subject Property is not equalized with comparable properties in the County. Specifically, statements and documents submitted at the hearing indicate that the Taxpayer asserts that the Subject Property should be equalized with the \$14,085 assessment of Frank's Bar in Trenton for tax year 2013.
13. The County submitted the PRCs for the Subject Property and five alleged comparable properties, which include the three parcels submitted for consideration by the Taxpayer. The County also submitted the following: (1) a spreadsheet that compares these five parcels with the Subject Property; (2) Referee Report; and (3) a comparable sales report for commercial properties in Hitchcock County and surrounding Counties in Nebraska.
14. The County Assessor asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.

STANDARD OF REVIEW

15. 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
16. 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
17. 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
18. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ See, Neb. Rev. Stat. §77-5016(8) (2013 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) (2010 Cum. Supp.).

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

GENERAL EQUALIZATION LAW

19. “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.”⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁸ 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.⁹
20. 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.¹⁰
21. 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.¹¹ 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.¹²
22. The constitutional requirement of uniformity in taxation extends to both rate and valuation.¹³ 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].”¹⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁵
23. “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.”¹⁶

EQUALIZATION ANALYSIS

24. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;¹⁷ 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.¹⁸

⁷ *Neb. Const.*, Art. VIII, §1.

⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁹ *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).

¹⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

¹¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹² *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).

¹³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

¹⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁵ *Id.* at 673, 94 N.W.2d at 50.

¹⁶ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁷ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

25. For equalization analysis purposes, the record contains submitted PRCs for five different parcels in Hitchcock County.
26. A review of the PRCs indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The characteristics of the properties submitted for consideration vary significantly, including age, condition, size of improvements, style, and amenities. A review of the per square foot assessed value is only applicable where properties are substantially similar.
27. While these properties submitted for consideration are not identical to the Subject Property, review of the PRCs for the Subject Property and the alleged comparable properties indicates that similar physical elements located on the parcels were valued at the same material level, and that differences in assessed values between the Subject Property and the alleged comparable properties are the direct result of differences between the properties.¹⁹
28. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review and relief.
29. 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 2013.²⁰ 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.

CONCLUSION

30. 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.
31. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Hitchcock County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.
2. That the taxable value of the Subject Property for tax year 2013 is:

¹⁹ See, *Id.*

²⁰ The Commission notes that the account notes set forth at the bottom of page 1 of the Subject Property's PRC state that the Hillside Perk property in Culbertson was not fully constructed as of the assessment date of January 1, 2013, which the \$55,065 assessment of that parcel for tax year 2013 reflects. "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

Land	\$ 1,600
Improvements	\$ 24,170
Total	\$ 25,770

3. This decision and order, if no further action is taken, shall be certified to the Hitchcock County Treasurer and the Hitchcock County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2013 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2013.
7. This order is effective on October 24, 2014.

Signed and Sealed: October 24, 2014.

Thomas D. Freimuth, Commissioner