

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Shane Rippen,
Appellant,

Case No: 13R 036

v.

Decision and Order Affirming Board of
Equalization

Hitchcock County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,049 sq. ft. residence and an attached garage, located in Culbertson, Hitchcock County, Nebraska. The legal description of the Subject Property is contained in the Case File.
2. The Hitchcock County Assessor assessed the Subject Property at \$43,195 for tax year 2013.
3. Shane Rippen (herein referred to as the “Taxpayer”) protested this value to the Hitchcock County Board of Equalization (herein referred to as the “County Board”) and requested a value of \$28,008 for tax year 2013.
4. The County Board determined that the assessed value of the Subject Property was \$43,195 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 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. Shane Rippen, 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, and Cindy McCorkle, Deputy Hitchcock County Assessor, were also present at the hearing.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card (herein referred to as “PRC”) for the Subject Property for tax year 2013 found at Tab C of County’s packet submitted at the hearing contains the following “Assessment Value History:”

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$1,630	\$41,565	\$43,195
2012	\$1,050	\$37,680	\$38,730
2011	\$1,315	\$34,320	\$35,635

10. As charted above, the County Board's \$43,195 determination for tax year 2013 includes \$1,630 for land and \$41,565 for the improvement components.
11. Tab A of the County's packet submitted at the hearing and Judy McDonald's "Biographical Sketch" found at Tab F indicate that the State Assessment Office performed assessment functions in Hitchcock County for tax years 2001 through 2012. Ms. McDonald served as an Assessment Assistant for the State Assessment Office for tax years 2001 through 2012, and she served as the County Assessor for tax year 2013 after the Hitchcock County assessment function reverted from State to County control on July 1, 2012.
12. The 2013 PRC and Tab A of the County's packet, together with Judy McDonald's statements, indicate that the County Board's \$41,565 determination for tax year 2013 attributable to the Subject Property's improvement components is based on a cost approach mass appraisal model. The 2013 PRC's \$41,565 total valuation of the Subject Property's improvements is allocated as follows: \$41,410 (Residence) + \$155 (Other/Misc Improvements) = \$41,565.
13. Page 1 of the 2013 PRC contains account notes indicating that the County Assessor's Office unsuccessfully attempted to inspect the Subject Property on June 27, 2013, after scheduling an appointment with the Taxpayer. The Taxpayer stated that he is willing to permit an inspection, but that work commitments prevented him from meeting with the County Assessor's Office as scheduled on June 27, 2013.¹
14. The Taxpayer provided PRCs for four alleged comparable properties located in Culbertson.
15. The Taxpayer asserted an opinion of value of \$30,000 based on a comparison of the Subject Property with assessed value of the Geier property .
16. From a valuation standpoint, the Taxpayer asserted that the County Board's \$43,195 determination for tax year 2013 is unreasonable or arbitrary based on the assessments of the four properties submitted for consideration.
17. From an equalization standpoint, the Taxpayer asserted that the County Board's \$43,195 determination for tax year 2013 is unreasonable or arbitrary in comparison to the four properties submitted for consideration.
18. The County submitted the following documents at the hearing: (1) 2013 PRCs for the Subject Property, and the County Assessor's seven alleged comparable properties; (2) spreadsheet found at tab D that compares the 2013 assessed values of the Subject Property with the County's seven alleged comparable properties; and (3) land model found at Tab E.
19. The County Assessor asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.
20. The County Assessor's statements and Tab A of the County's packet indicate that the cost approach model applied to the improvement components of residential parcels in Culbertson for tax year 2013 is influenced by the following: (1) use of 2012 Marshall &

¹ The Commission notes that Tab A of the County's packet submitted at the hearing indicates that the County Assessor "was denied access by the taxpayer" for inspection purposes. The County Assessor stated at the hearing that this "denial" language was authored by Nebraska Department of Revenue staff and does not accurately reflect her interaction with the Taxpayer. Rather, the County Assessor indicated that the account notes set forth at the bottom of page 1 of the Property Record Card provide a more accurate description of the interaction between her office and the Taxpayer.

Swift costing tables, which involved an update in comparison to the 2010 tables used previously; and (2) upward quality and condition adjustments applied to some residential parcels in Culbertson based on a review of photographs prior to the property valuation certification date in March 2013, in order to increase the assessments to sales ratio in the community to meet the 92% to 100% requirement imposed by Nebraska Statutes (the PRC indicates that this review assigned Average quality and condition ratings to the Subject Property for tax year 2013).

21. The County Assessor asserted that the style of roof line contributed to the County Assessor's determination of the quality of the Subject Property and other properties. The County Assessor asserted that low roof lines indicate lower quality properties.

STANDARD OF REVIEW

22. 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
23. 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
24. 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
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL VALUATION LAW

26. 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
27. "Actual value, market value, and fair market value mean exactly the same thing."⁹

² 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).

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).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁷ *Omaha Country Club v. Hitchcock 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).

28. 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.¹⁰
29. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
30. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
31. 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.¹³

VALUATION ANALYSIS

32. The Taxpayer asserted that the County overvalued the Subject Property's residence. In support of this assertion, the Taxpayer submitted PRCs of four Culbertson parcels. The Taxpayer asserted that the Subject Property has an actual value of \$30,000, similar to the assessed value of the Geier Property.
33. The Commission notes that the Geier Property has a lower condition rating than the Subject Property, and therefore receives a greater physical depreciation according the PRCs. The difference in physical depreciation explains almost the entire difference in assessed values.
34. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁴ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹⁵ The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.
35. A comparable sale provides weight towards the actual value of the Subject Property when it possesses the same physical, functional, and locational characteristics.¹⁶ If an alleged comparable property has different physical, functional, and locational characteristics,

⁹ *Omaha Country Club v. Hitchcock County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

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

¹⁵ *Id.*

¹⁶ 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).

- then the adjustments must be made to account for these differences.¹⁷
36. The Form 422 found at Tab B of the County's packet provides that the County Assessor issued a recommendation to the County Board to adopt its \$43,195 notice value, which includes its \$41,565 valuation of the Subject Property's improvement components. The Form 422 indicates that this recommendation is based on the Taxpayer's failure to meet with the County Assessor's Office for inspection purposes in June 2013. The County Board adopted the County Assessor's \$43,195 recommendation regarding the actual value of the Subject Property for tax year 2013.
 37. The Taxpayer stated that while he is willing to permit an inspection of the Subject Property, he was unable to meet with the County Assessor's Office in June 2013.
 38. The County's packet indicates that the County Assessor's \$41,565 recommendation regarding the Subject Property's improvement components adopted by the County Board for tax year 2013 is based on a cost approach model. The cost approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.¹⁸ A review of the Subject Property's PRC found at Tab C of the County's packet, which includes Marshall & Swift cost detail that assigns \$7,511 of actual value to the garage prior to application of 62% depreciation, discloses a correct application of the County's cost approach model.
 39. The Commission has reviewed photographs of the Subject Property and other Culbertson parcels submitted at the hearing. Based on this review, together with a review of the statements and documents submitted at the hearing, the Commission finds that the County Assessor's determination regarding the Subject Property's quality and condition ratings for tax year 2013 stemming from a review of photographs of residential parcels in Culbertson for purposes of meeting the 92% to 100% assessments to sales ratio requirement imposed by Nebraska Statutes is not unreasonable or arbitrary. The Commission notes that the Subject Property's siding appears to be in good shape, and its general appearance appears superior to most if not all of the other properties submitted for consideration by the Taxpayer and County. The Commission notes that the exterior design of a structure does contribute to its quality and that generally the more ornamental the exterior the higher the quality.¹⁹
 40. Based on a review of the documents and statements submitted at the hearing, the Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's determination is unreasonable or arbitrary for tax year 2013.

GENERAL EQUALIZATION LAW

41. "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."²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

¹⁷ 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).

¹⁸ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁹ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at 6 (12/2010).

²⁰ *Neb. Const.*, Art. VIII, §1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²²

42. 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.²³
43. 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.²⁴ 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.²⁵
44. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ 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].”²⁷ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁸
45. “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.”²⁹

EQUALIZATION ANALYSIS

46. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁰ 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.³¹
47. For equalization analysis purposes, the Taxpayer submitted PRCs and analysis for four parcels. The Taxpayer asserted that the improvement components of the Subject Property should be equalized with these four alleged comparable parcels.
48. While the Taxpayer’s four properties submitted for consideration are not identical to the Subject Property, the PRCs indicate that the improvement components of the Subject Property and the alleged comparable properties were valued using the State Appraiser’s Computer Assisted Mass Appraisal (“CAMA”) system, which performs a mass appraisal cost approach.
49. A 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

²² *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).

²³ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *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).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁰ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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.³²

50. A review of the PRCs submitted by the Taxpayer indicates that the properties submitted for consideration are not truly comparable with the Subject Property. The characteristics of the properties submitted for consideration vary. Relief based on a review of the assessed value per square unit is only applicable where properties are substantially similar.
51. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
52. 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.

CONCLUSION

53. 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.
54. 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:

Land	\$ 1,630
Improvements	\$41,565
Total	\$43,195

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 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.

³² See, *Id.*

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 10, 2014.

Signed and Sealed: October 10, 2014.

Thomas D. Freimuth, Commissioner