

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gene D. Weilage,
Appellant,

v.

Pawnee County Board of Equalization,
Appellee.

Case No: 13A 053 & 13A 054

Decision and Order Affirming the
Determination of the Pawnee
County Board of Equalization

GENERAL BACKGROUND AND PROCEDURAL HISTORY

1. The Subject Property (Subject Property) in 13A 053 is an agricultural parcel located in Pawnee County, NE, with a legal description of: NE ¼ & N ½ SE ¼ & S ½ NW ¼ & E 70 A N1/2 NW1/4.
2. The Subject Property (Subject Property) in 13A 054 is an agricultural parcel located in Pawnee County, NE, with a legal description of: S1/2 NE1/4 & N1/2 SE1/4.
3. The Pawnee County Assessor assessed the Subject Property in 13A 053 at \$474,215 for tax year 2013.
4. The Pawnee County Assessor assessed the Subject Property in 13A 054 at \$120,595 for tax year 2013.
5. Gene D. Weilage (herein referred to as the “Taxpayer”) protested these values to the Pawnee County Board of Equalization (herein referred to as the “County Board”). The Taxpayer requested an assessed value of \$395,000 for the Subject Property in 13A 053 for tax year 2013, and an assessed value of \$110,185 for the Subject Property in 13A 054 for tax year 2013
6. The County Board determined that the assessed value of the Subject Property in 13A 053 was \$474,215 for tax year 2013, and the assessed value of the Subject Property in 13A 054 was \$120,595 for tax year 2013.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
8. A Single Commissioner hearing was held on June 12, 2014, at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
9. Gene D. Weilage was present at the hearing.
10. Jennifer Stehlik Ladman, the Pawnee County Attorney, was present for the County Board. Jonathan Bailey, the Pawnee County Assessor, was also present at the hearing.

STANDARD OF REVIEW

11. 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

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

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

12. 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
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

16. The Taxpayer asserted that access to the Subject Property is limited due to insufficient water crossings, and that this lack of access negatively affects the actual value of the Subject Property.
17. The Taxpayer’s opinion of value of the Subject Property is \$395,000 (Case No. 13A 053) and \$110,185 (Case No. 13A 054).⁸
18. In support of his opinions of value, the Taxpayer asserted that the cost of a “tube” water crossing for purposes of permitting access to the Subject Property amounts to approximately \$50,000.
19. The County submitted the Property Record Files for the Subject Property. A Farm Services Agency map depicting the Subject Property was also submitted at the hearing.
20. The County Board asserted that the access limitation asserted by the Taxpayer does not affect the actual value of the Subject Property.

GENERAL VALUATION LAW

21. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹

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) (2012 Cum. Supp.).

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

⁷ 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).

⁸ See, Case File.

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

VALUATION ANALYSIS

27. The Taxpayer asserted that the County overvalued the Subject Property due to limited access. The Taxpayer’s opinions of value of the Subject Property is \$395,000 (Case No. 13A 053) and \$110,185 (Case No. 13A 054).
28. In support of his opinions of value, the Taxpayer asserted that the cost of a “tube” water crossing for purposes of permitting access to the Subject Property amounts to approximately \$50,000.
29. The County asserted that the Subject Property is valued correctly. The County also stated that approximately three to four sales in the previous 15 years involved limited access issues similar to those submitted for consideration by the Taxpayer, and that these sales did not reflect diminished value relating to such issues.
30. The Taxpayer did not submit a fee appraisal of the Subject Property at the hearing before the Commission.
31. The Taxpayer’s method to determine his \$395,000 (Case No. 13A 053) and \$110,185 (Case No. 13A 054) opinions of value are not clear. Therefore, the Commission finds that the Taxpayer’s opinions of value are not derived from commonly accepted appraisal techniques for determining the actual value of real property under Nebraska Statutes section 77-112.

⁹ 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).

¹⁰ *Omaha Country Club v. Pawnee 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).

32. The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. The Taxpayer's method to determine his opinions of value are not based on the methods identified under Nebraska Statutes section 77-112.
33. The Commission notes that the sales comparison approach, which is often used for purposes of valuing agricultural land in Nebraska, has a defined systematic procedure that requires, among other steps, that the individual appraising the Subject Property "[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences."¹⁵
34. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁶ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371.¹⁷
35. The Taxpayer did not provide analysis regarding adjustments based on the elements of comparison referenced above.
36. Based on a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer's \$395,000 (Case No. 13A 053) and \$110,185 (Case No. 13A 054) opinions of value do not constitute clear and convincing evidence that the County Board's determinations for tax year 2013 were arbitrary or unreasonable.
37. Guidance for purposes of applying the sales comparison approach and other valuation methods is widely available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission's "Rules/Regulations" website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission's "Decisions" website link.
38. The Commission also notes that section 8 of 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*

¹⁵ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at pgs. 301-302.

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 141.

¹⁷ Neb. Rev. Stat. §77-1371 (Reissue 2009).

maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

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.”¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰
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.²¹
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.²² 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.²³
42. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ 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].”²⁵ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁶
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.”²⁷

EQUALIZATION ANALYSIS

44. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁸ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property

¹⁸ *Neb. Const.*, Art. VIII, §1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *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).

²¹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

²⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁸ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

regardless of similarity indicates that the Subject Property was not assessed at a uniform percentage of market value.²⁹

45. The evidence submitted indicates that similar properties were assessed at similar values and that the Subject Property was assessed at a uniform percentage of market value when compared to other real property.

CONCLUSION

46. 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.
47. 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 Decisions of the Pawnee County Board of Equalization determining the value of the Subject Property for tax year 2013 is Affirmed.
2. The taxable value of the Subject Property in 13A 053 is \$474,215 for tax year 2013, and the taxable value of the Subject Property in 13A 054 is \$120,595 for tax year 2013.
3. This Decision and Order, if no further action is taken, shall be certified to the Pawnee County Treasurer and the Pawnee 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 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 September 10, 2014.

Signed and Sealed: September 10, 2014.

Thomas D. Freimuth, Commissioner

²⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).