

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Craig D. Scott,
Appellant,

Case No: 13R 185

v.

Decision and Order Reversing
County Board of Equalization

Hitchcock County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,880 square foot residence located in Trenton, Hitchcock County, Nebraska.
2. According to the Form 422 for this case, the Hitchcock County Assessor assessed the Subject Property at \$184,960 for tax year 2013 (Land \$4,340 + Buildings \$180,620 = \$184,960).
3. Craig D. Scott (herein referred to as the “Taxpayer”) protested this value to the Hitchcock County Board of Equalization (herein referred to as the “County Board”). The Taxpayer did not request a specific valuation on the Form 422 for this case.
4. According to the Form 422 for this case, the County Board determined that the assessed value of the Subject Property was \$163,490 for tax year 2013.¹
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. Craig D. Scott, the Taxpayer, was 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 Form 422 submitted by the County for the Subject Property indicates that the County Board’s \$163,490 determination for tax year 2013 includes \$4,340 for land and \$159,150 for the improvement component.
10. The Form 422 and the Property Record Card indicate that the County Assessor’s \$184,960 (Land: \$4,340; Improvement: \$180,620) notice value for tax year 2013 attributable to the Subject Property’s improvement components is based on a cost approach mass appraisal model.

¹ The Property Record Card submitted by the County in this case indicates that the Subject Property's assessed value for tax year 2013 amounted to \$163,175 (Land \$4,340 + Buildings \$158,835 = \$163,175). It is unclear why this value is inconsistent with the \$163,490 County Board determination referenced on the Form 422.

11. The Form 422 and the Property Record Card indicate that the County Assessor's Office recommended a lowering of the improvement component from \$180,620 to \$159,150 after a review of the Subject Property in June 2013. According to the Form 422, the County Board adopted this \$159,150 recommendation for the improvement components for tax year 2013.
12. The Property Record Card provides that the Taxpayer purchased the Subject Property for \$200,000 on August 4, 2011.
13. The Property Record Card also provides that the Taxpayer constructed a detached garage on the Subject Property in 2011 after his purchase, and that the County's valuation of this improvement component amounted to \$20,650 for tax year 2013 (page 3 of the Property Record Card also indicates that the County assigned a value of \$575 to a "Block Garage" constructed in 1950). Thus, the Property Record Card's \$158,835 total valuation of the Subject Property's improvements is allocated as follows: \$137,610 (Residence) + \$20,650 (Detached Garage) + \$575 (Block Garage) = \$158,835.
14. The Property Record Card contains the following Subject Property valuation history:²

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$4,340	\$158,835	\$163,175
2012	\$2,800	\$155,055	\$157,855
2011	\$4,080	\$101,590	\$105,670

15. The Taxpayer provided Property Record Cards and sale/assessment history analysis for six alleged comparable properties.
16. The Taxpayer's dispute is focused in part on the total value of the Subject Property for tax year 2013. In this regard, the Taxpayer contended that the County's valuation of the Subject Property is unreasonable in comparison to the valuation of the averaged per square foot sale prices of three of the six properties located in Hitchcock County submitted for consideration.
17. The Taxpayer's dispute is also focused in part on the \$137,610 improvement value of the Subject Property's residence (as indicated above, the remainder of the Taxpayer's improvement value for tax year 2013 is attributable to the garages situated on the Subject Property). The Taxpayer contended that the County's valuation of the residence is unreasonable in comparison to the valuation of the residence component of six properties located in Hitchcock County.
18. The County submitted the Property Record Cards for the Subject Property and the County Assessor's alleged comparable properties. The County also submitted a copy of a \$148,000 fee appraisal of the Subject Property dated April 1, 2011, which is prior to the Taxpayer's \$200,000 purchase in August of that year and prior to his construction of the detached garage noted above.
19. The County Assessor asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.

² As indicated previously, the Property Record Card submitted by the County in this case indicates that the Subject Property's assessed value for tax year 2013 amounted to \$163,175 (Land \$4,340 + Buildings \$158,835 = \$163,175). It is unclear why this value is inconsistent with the \$163,490 County Board determination referenced on the Form 422.

STANDARD OF REVIEW

20. The Commission's review of the determination of the County Board of Equalization is de novo.³ "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."⁴
21. 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."⁵ 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."⁶
22. 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.⁷
23. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

GENERAL VALUATION LAW

24. 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
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

³ 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).

⁴ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁸ *Omaha Country Club v. Hitchcock Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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. Hitchcock 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).

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 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 provided Property Record Cards and sale/assessment history analysis for six alleged comparable properties.
31. The Taxpayer derived an opinion of value in the amount of \$118,778 for the Subject Property by multiplying its 1,880 square foot gross living area by \$63.18 per square foot. The Taxpayer derived this \$63.18 per square foot multiplier by averaging the per square foot sale prices of three of the six properties submitted for consideration.
32. The Taxpayer derived an alternate opinion of value in the amount of \$87,871 for the Subject Property's residence by multiplying the 1,880 square foot gross living area by \$46.74 per square foot (in contrast, the County assessed the Subject Property's residence component at \$137,610 for tax year 2013). The Taxpayer derived this \$46.74 per square foot multiplier by averaging the per square foot assessed residence value of the six properties submitted for consideration.
33. The Taxpayer's opinion of value based on the use of assessed values and sales prices of alleged comparable properties can best be described as an attempted sales comparison approach. In the sales comparison approach an opinion of value is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property.¹⁵ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.¹⁶ This process requires an analysis of sales prices, not assessed values.¹⁷ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.¹⁸
34. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.¹⁹ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²⁰ The comparison of assessed values of

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 *Id.*

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2009).

²⁰ *Id.*

- dissimilar parcels is not recognized as an appropriate approach.
35. An examination of the Taxpayer's alleged comparable properties indicates that the properties have several differences in terms of characteristics in comparison to the Subject Property, including age, size, style, amenities and number of improvements. Additionally, the Taxpayer did not use sales prices exclusively, but instead relied in part upon an examination of assessed values. The Taxpayer's approach for determining the actual value of the Subject Property's improvement component does not meet the requirements of the sales comparison approach.²¹
 36. The Taxpayer's alternate opinions of value are determined by averaging the per square foot sale prices of three properties and by averaging the portion of assessed value attributable to improvements of six properties. These approaches are not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.²² Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted fee or mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
 37. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.²³ Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."²⁴
 38. Based on the foregoing analysis, the Commission is unable place significant weight on the Taxpayer's alternate opinions of value because they are not based on a professionally accepted appraisal approach. Thus, the Commission finds that the Taxpayer's submissions do not constitute clear and convincing evidence that the County Board's determination was unreasonable or arbitrary for tax year 2013.
 39. The Form 422 indicates that the County Board adopted the County Assessor's revised opinion of value which was calculated through the cost approach. The cost approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.²⁵
 40. The Commission notes, however, that the Property Record Card submitted by the County in this case indicates that the Subject Property's assessed value for tax year 2013 amounted to \$163,175 (Land \$4,340 + Buildings \$158,835 = \$163,175). It is unclear why this value is inconsistent with the \$163,490 County Board determination referenced on the Form 422.
 41. In order to render a reliable opinion of value using the cost approach, the components must be correctly identified and calculated.²⁶
 42. Based on the miscalculation regarding the Subject Property's actual value as of the date of assessment contained on the Form 422, the Commission finds that the County Board's determination is unreasonable or arbitrary.

²¹ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

²² See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²³ See, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

²⁴ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

²⁵ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁶ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 233-234 (3rd ed. 2010).

43. The Commission finds that the contribution to value of the improvement components should be reduced from \$159,150 to \$158,835, resulting in an actual value of the Subject Property of \$163,175 for tax year 2013 (Land \$4,340 + Buildings \$158,835 = \$163,175).
44. While the Commission is unable to find that the Taxpayer's sales comparison analysis constitutes clear and convincing evidence that the County Board's determination for tax year 2013 is arbitrary or unreasonable, the Taxpayer's efforts to produce useful information are noticed by this Commissioner. Moreover, even though it is this Commissioner's understanding that an appraisal offered by a non-licensed individual has rarely if ever constituted clear and convincing evidence that the County Board's valuation determination was arbitrary or unreasonable, it is my view that a viable appraisal can be produced by a non-licensed property owner for ad valorem tax purposes in Nebraska.
45. Guidance for purposes of applying the sales comparison approach and other valuation methods is 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.

GENERAL EQUALIZATION LAW

46. "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."²⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁸ 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.²⁹
47. 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.³⁰
48. 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.³¹ 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.³²
49. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³³ 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

²⁷ *Neb. Const.*, Art. VIII, §1.

²⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *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).

³⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³² *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).

³³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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].”³⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁵

50. “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.”³⁶

EQUALIZATION ANALYSIS

51. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁷ 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.³⁸
52. For equalization analysis purposes, the Taxpayer submitted Property Record Cards for six parcels.
53. A review of the Property Record Cards 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 significantly, including age, size of improvements, style, and amenities. A review of the per square foot assessed value is only applicable where properties are substantially similar.
54. The Commission finds that the Taxpayer’s alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
55. 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

56. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
57. The Taxpayer has 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 vacated and reversed.

ORDER

IT IS ORDERED THAT:

³⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁵ *Id.* at 673, 94 N.W.2d at 50.

³⁶ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁷ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

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

Land	\$ 4,340
Improvements	\$158,835
Total	\$163,175

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 September 19, 2014.

Signed and Sealed: September 19, 2014.

Thomas D. Freimuth, Commissioner