

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Raymond G. Zagozda
Appellant,

Case No: 13R 241

v.

Decision and Order Reversing
County Board of Equalization

Douglas County Board of Equalization,
Appellee.

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 1,166 square foot condominium located at 2225 South 51st Street, Omaha, Douglas County, Nebraska. The legal description of the Subject Property is: MARINDA HEIGHTS CONDOMINIUM REGIME LOT 12 BLOCK 0 UNIT 12 7.5%.¹
2. The Douglas County Assessor assessed the Subject Property at \$111,900 for tax year 2013.
3. Raymond G. Zagozda (herein referred to as the “Taxpayer”) protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$111,900 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 at the State Office Building, in Lincoln, Nebraska, before Commissioner Thomas D. Freimuth, on July 3, 2014.
7. Raymond G. Zagozda, the Taxpayer, was present at the hearing. Ann Zagozda, the Taxpayer’s spouse, was also present at the hearing.
8. Larry Thomsen, an employee of the Douglas County Assessor’s Office, was present for the County Board.

STANDARD OF REVIEW

9. 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
10. 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

¹ See, Assessment Report, pgs. 2-3.

² 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).

³ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

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

11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

13. The Taxpayer submitted documentation analyzing the sale and assessment history of properties in the Marinda Heights Condominium complex where the Subject Property is located. These properties are located at 2207 South 51st Street (\$90,000 sale in 2008; 2013 assessment: \$90,000); 2209 South 51st Street (\$90,000 sale in April 2012; 2013 assessment: \$111,800); and 2223 South 51st Street (\$80,000 sale in January 2013; 2013 assessment: \$111,900). The Taxpayer asserted that these three properties are identical to the Subject Property.
14. The Taxpayer asserted that the three Marinda Heights Condominium sales submitted for consideration demonstrate that the County Board’s \$111,900 assessment is in excess of the Subject Property’s actual value. Based on these sales, the Taxpayer rendered a \$90,000 opinion of value for the Subject Property for tax year 2013.
15. The Taxpayer further asserted that the Subject Property should be equalized with the property located at 2207 South 51st Street for tax year 2013, which the County Board assessed at \$90,000 for that year.
16. The County Board submitted an Assessment Report for tax year 2013 at the hearing which contains the Property Record Files for the Subject Property and two comparable Marinda Heights Condominium properties subject to sales in April 2010 and April 2012 (2209 South 51st Street, which is a comparable referenced by the Taxpayer as noted above). The Assessment Report also contains an alleged comparable condominium subject to sale in March 2013 located at 104 South 37th Street.
17. The Assessment Report indicates that the valuation of the Subject Property’s improvement component for tax year 2013 was based on a sales comparison approach mass appraisal model derived from market area arm’s-length sales and multiple regression analysis. Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.⁸ The Assessment Report contains a document entitled “Market Calculation Detail” that sets forth the value assigned to each of the various County Assessor mass

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. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

appraisal model characteristics relating to the Subject Property's improvement component for tax year 2013.

18. The County's representative agreed with the Taxpayer's assertion that Marinda Heights Condominium properties are substantially similar.
19. The County's representative submitted a one-page "RealWare" document indicating that the County Board lowered the assessment of the Marinda Heights Condominium comparable located at 2207 South 51st Street to \$90,000 in tax year 2012. This document and the Taxpayer's screenshot documentation also indicate that the County Board determined that the assessed value of this property amounted to \$90,000 for tax years 2013 and 2014.

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.⁹
21. "Actual value, market value, and fair market value mean exactly the same thing."¹⁰
22. 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
23. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹²
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹³
25. 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

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. 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

26. The Taxpayer asserted that the County Board overvalued the Subject Property. In support of this assertion, the Taxpayer submitted documentation that included analysis of the sale and assessment history of three properties in the Marinda Heights Condominium complex where the Subject Property is located and which are noted above. Based on this analysis, which included concern regarding the County's consideration of the economic crisis, the Taxpayer asserted that the actual value of the Subject Property amounted to \$90,000 for tax year 2013.
27. The County Board relied upon the County Assessor's opinion of the actual value of the Subject Property as determined by a sales comparison approach and a mass appraisal model.¹⁵
28. The Taxpayer's opinion of value relies on the use of sales of comparable properties.
29. The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser "[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences."¹⁶
30. 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.¹⁷ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that "[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value."¹⁸
31. The Taxpayer's \$90,000 opinion of value does not provide analysis regarding adjustments based on the elements of comparison referenced above. The Commission also notes that two of the three sales submitted for consideration by the Taxpayer were non-arm's length transactions, which are generally excluded for purposes of the sales comparison approach (according to the screenshots from the Douglas County Assessor's website and statements by the parties at the hearing, the \$80,000 sale of 2223 South 51st Street was a bank sale, and the \$90,000 sale of 2207 South 51st Street in 2008 was a family transfer). Thus, the Commission finds that the Taxpayer's analysis does not constitute clear and convincing evidence that the County Board's determination of the actual value of the Subject Property for tax year 2013 was unreasonable or arbitrary.
32. Further, with respect to the Taxpayer's concern regarding insufficient consideration of the economic crisis by the County, general guidance in this regard in the mass appraisal context is contained in *Property Assessment Valuation*, which is published by the International Association of Assessing Officers.¹⁹ For example, *Property Assessment Valuation* states that assessment officials are required to review factors such as

¹⁵ See, Assessment Report.

¹⁶ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301 - 302.

¹⁷ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008) at 141.

¹⁸ Neb. Rev. Stat. §77-1371 (Reissue 2009).

¹⁹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 73 - 83.

foreclosure rates and vacancy rates as a part of developing and maintaining market area databases.²⁰ Additionally, in addressing mass appraisal techniques such as the model used by the County to value the Subject Property, *Property Assessment Valuation* states as follows:

Although the structure of a mass appraisal model may be valid for many years, the model is usually recalibrated or updated every year. To update for short periods, trending factors may suffice. Over longer periods, as the relationships among the variables in market value change, complete market analyses are required. **The goal is for mass appraisal equations and schedules to reflect current market conditions.**²¹

33. The Illinois Court of Appeal stated as follows regarding consideration of “current market conditions” in a 2012 opinion affirming a lower court’s approval of a \$300,000 judicial foreclosure sale of commercial real estate secured by a note with a principal balance in the amount of \$824,540:

Our courts today face a similar situation as that faced by the court in [1937] *Levy* during the Great Depression, in that many properties were purchased during a time when real estate values greatly increased (referred to as “the real estate bubble”) **and those same properties plummeted in value after 2006 [and] continuing to the present.** Consequently, many property owners owe much more to the lenders than what the property is worth. While this fact is unquestionably tragic, the value of a given piece of property must be determined by considering all of the pertinent factors as they exist at the time of the sale, whether such sale is made in the open market or through a judicial sale as a result of a foreclosure action.²²

34. The Nebraska Supreme Court has also recently considered “current market conditions” in the aftermath of the economic crisis. In *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, the Court upheld a ruling issued by the Lancaster County Court that the \$113,000 purchase price of property sold at an estate auction in a weak real estate market after the decedent’s death in 2008 stemmed from an arm’s length transaction and was the best evidence of value for inheritance tax purposes.²³
35. This Commissioner is mindful that the events surrounding the economic crisis adversely affected real estate values throughout the United States, including some markets in Nebraska. Nonetheless, the Commission finds that the Taxpayer did not provide sufficient clear and convincing evidence to quantify the impact of the economic crisis on the actual value of the Subject Property.

²⁰ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 77 - 83.

²¹ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at p. 417-18 (emphasis added).

²² *Sewickley, LLC v. Chicago Title and Trust Company*, 974 N.E.2d 397, 406 (Court of Appeal of Illinois, First District, Second Division 2012) (emphasis added).

²³ *County of Lancaster v. Union Bank & Trust Co. (In re Estate of Craven)*, 281 Neb. 122, 794 N.W.2d 406 (Neb. 2011).

GENERAL EQUALIZATION LAW

36. “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.”²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶
37. 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.²⁷
38. 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.²⁸ 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.²⁹
39. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁰ 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].”³¹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³²
40. “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.”³³

EQUALIZATION ANALYSIS

41. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuation of the comparable located at 2207 South 51st Street for tax year 2013. In support of this assertion, the Taxpayer submitted a screenshot of the comparable from the Douglas County Assessor’s website that indicates that the assessed value thereof amounted to \$90,000 for tax year 2013. As also discussed, the County’s representative at the hearing submitted a one-page “RealWare” document indicating that the County Board lowered the assessment of this comparable to \$90,000 in tax year 2012, and that the

²⁴ *Neb. Const.*, Art. VIII, §1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

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

²⁸ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *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).

³⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³² *Id.* at 673, 94 N.W.2d at 50.

³³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

County Board determined that the assessed value thereof amounted to \$90,000 for tax years 2013 and 2014.

42. The County's representative stated that the Subject Property is substantially similar to the comparable. The County's representative also stated that the County Board's assessment determination for the 2207 South 51st Street property for tax year 2013 raised concern regarding equalization with the Subject Property.
43. The Commission notes that the documentation submitted by both parties for the 2207 South 51st Street property indicate that it is substantially similar -- if not identical -- to the Subject Property in terms of size, features, quality, and condition.
44. Based on a review of the documentation and testimony relating to the Subject Property and the 2207 South 51st Street property, the Commission finds that the parcels are substantially similar.
45. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;³⁴ 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.³⁵
46. The Commission finds that the 2207 South 51st Street parcel submitted by the Taxpayer is similarly situated or comparable to the Subject Property for equalization analysis purposes. It follows that, by failing to equalize the Subject Property with the parcel at 2207 South 51st Street, the County Board's determination for tax year 2013 was unreasonable or arbitrary because it treats similarly situated properties at materially different levels.³⁶
47. The County Board determined that the assessed valuation of the 2207 South 51st Street comparable for tax year 2013 is \$90,000. Therefore, the Commission finds that the equalization value of the Subject Property for tax year 2013 is \$90,000.

CONCLUSION

48. 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.
49. 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:

1. The decisions of the Douglas 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:

³⁴ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁵ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

³⁶ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999); *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 - 529 (2008) ("By adjudicating tax protests in greatly disparate amounts ... the Board failed to fulfill its 'plain duty' to equalize property valuations.")

Land	\$ 4,600
Improvements	\$ 85,400
Total	\$ 90,000

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 (2012 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 August 27, 2014.

Signed and Sealed: August 27, 2014.

Thomas D. Freimuth, Commissioner