

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Mark S. & Sherry A. Moorhous,
Appellant,

v.

Hitchcock County Board of Equalization,
Appellee.

Case No: 13C 086

Decision and Order Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a commercial parcel improved with a 2,800 square foot mini storage building located in Culbertson, Hitchcock County, Nebraska.
2. According to the Form 422 for this case, the Hitchcock County Assessor assessed the Subject Property at \$45,205 for tax year 2013 (Land \$1,400 + Buildings \$43,805 = \$45,205).
3. Mark S. & Sherry A. Moorhous (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 \$34,380 for tax year 2013 (Land \$1,400 + Buildings \$32,980 = \$34,380).
4. According to the Form 422 for this case, the County Board determined that the assessed value of the Subject Property was \$41,700 for tax year 2013, and the revised Property Record Card (herein referred to as "PRC") submitted by the County at the hearing indicates that this value is allocated as follows: Land \$1,400 + Buildings \$40,300 = \$41,700.¹
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. Sherry Moorhous, one of the Taxpayers, 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, Cindy McCorkle, Deputy Hitchcock County Assessor, and Mark Stanard, a contract appraiser for Hitchcock County, were also present at the hearing.

¹ The Commission notes that the County's packet submitted at the hearing contains the PRC reflecting the County Assessor's \$45,205 notice value for tax year 2013 (page 1 of this PRC indicates a "Run Date" of July 13, 2013, which is prior to the County Board's final determination rendered on July 17, 2013). The County's packet also contains the PRC reflecting the County Board's \$41,700 determination of the Subject Property's actual value for tax year 2013 (page 1 of this PRC indicates a "Run Date" of September 23, 2013).

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The PRC provides that the Taxpayer purchased the Subject Property in 2000.
10. The PRC also provides that the Taxpayer constructed a storage unit on the Subject Property in 2003, which is assessed for \$40,300 for tax year 2013.
11. The PRC contains the following Subject Property valuation history:

YEAR EFFECTIVE	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE
2013	\$1,400	\$40,300	\$41,700
2012	\$1,400	\$32,980	\$34,380
2011	\$2,300	\$32,980	\$35,280

12. 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 \$41,700 determination on July 17, 2013. This summary includes detail regarding the reduction of the County Assessor's \$45,205 notice value to the \$41,700 amount adopted by the County Board.
13. The Taxpayer provided the Commission with PRCs for two alleged comparable properties (N&N Associates and Blackwood Enterprises). The Taxpayer also submitted historic cost and income tax depreciation information relating to the Subject Property.
14. The Taxpayer's dispute is focused in part on the equalized value of the improvements located on the Subject Property.
15. The Taxpayer did not dispute the County Board's valuation of the Subject Property's land component.
16. The County submitted the PRCs for the Subject Property and the County Assessor's alleged comparable properties, together with a spreadsheet that compares these parcels. The County also submitted the following: (1) PRCs for the Taxpayer's two alleged comparable properties from Hitchcock County; (2) PRCs for the Taxpayer's three alleged comparable properties located in Red Willow County that were presented to the County Board during the tax year 2013 protest period; and (3) the Taxpayer's table that analyzes the assessments of the five total Hitchcock and Red Willow alleged comparables submitted to the County Board.
17. The County Assessor asserted that the Taxpayer's alleged comparable properties are not truly comparable to the Subject Property.

STANDARD OF REVIEW

18. 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

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).

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

19. 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
20. 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
21. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

GENERAL VALUATION LAW

22. 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
23. “Actual value, market value, and fair market value mean exactly the same thing.”⁹
24. 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
25. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
26. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
27. 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

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).

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. Stat. §77-131 (Reissue 2009).

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

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

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

28. The Parties presented the PRCs and an assessment analysis for five alleged comparable properties from Hitchcock and Red Willow counties.
29. The Taxpayer derived an opinion of value in the amount of \$34,380 for the Subject Property based on the assessed value for the prior tax year and the above-noted assessment analysis.
30. 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. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to place significant weight on the Taxpayer's opinion of value to the extent it relies on the use of assessed values of storage facilities in Hitchcock or Red Willow Counties.
31. The Taxpayer's opinion of value based on the use of assessed values 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.¹⁶ An opinion of value based on use of the sales comparison approach requires use of a systematic procedure.¹⁷ This process requires an analysis of sales prices, not assessed values.¹⁸ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.¹⁹
32. 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. Additionally, the Taxpayer relied 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.²⁰
33. The Taxpayer's opinion of value also relies in part on cost and depreciation information relating to the Subject Property.
34. The cost approach includes six steps:

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

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

¹⁵ *Id.*

¹⁶ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

¹⁷ *Id.* at 301-302.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.²¹

35. The cost approach includes steps that estimate the cost to complete components of the Subject Property, however, cost estimating is not the same as appraising.²² When estimating the cost to complete components, the assessor should use typical costs obtained from the market, instead of actual costs to construct the real property.²³
36. Actual costs to construct items may vary significantly, in part because bids for projects vary substantially based upon contractor and owner needs or the business model from project to project.²⁴ In order to account for this variance, the assessor must either use nationally published cost manuals that contain indexes for adjusting to local markets, or construct their own cost manual using known market data.²⁵
37. For these reasons, the Commission further finds that the Taxpayer's cost and income tax depreciation information for the Subject Property does not constitute clear and convincing evidence that the County Board's determination for tax year 2013 was unreasonable or arbitrary.
38. The evidence and testimony of Mark Stanard, an appraiser for the County Assessor, indicates that the County Board adopted the County Assessor's revised opinion of value which was calculated through the income approach. The income approach is a statutorily permissible method for determining the actual value of real property for ad valorem tax purposes.²⁶
39. The income approach calculation conducted by the County was based on income information supplied by the Taxpayer to Mr. Stanard at the County protest level.
40. Mr. Stanard testified that when the income approach information was entered into the County's Computer Assisted Mass Appraisal system (CAMA) that the cost approach numbers change based on the final assessed value, but that the County relied most heavily on the income approach.
41. 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.
42. 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

²¹ International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010).

²² See, International Association of Assessing Officers, *Property Assessment Valuation*, at 238 (3rd ed. 2010).

²³ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 237 (3rd ed. 2010).

²⁴ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 237-238 (3rd ed. 2010).

²⁵ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 238 (3rd ed. 2010).

²⁶ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

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

43. "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
44. 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
45. 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
46. 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 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
47. "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

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).

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).

EQUALIZATION ANALYSIS

48. 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
49. For equalization analysis purposes, the Parties presented PRCs for several different parcels in Hitchcock and Red Willow Counties.
50. 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, size of improvements, style, and amenities. A review of the per square foot assessed value is only applicable where properties are substantially similar.
51. While these properties submitted for consideration are not identical to the Subject Property, review of the PRCs for the Subject Property, after the adjustment by the County Board, 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.³⁹
52. The Commission finds that the Taxpayer's alleged comparable properties are not substantially similar to the Subject Property for purposes of equalization review.
53. 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.

CONCLUSION

54. 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.
55. 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:

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).

³⁹ See, *Id.*

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	\$ 1,400
Improvements	\$40,300
Total	\$41,700

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 10, 2014.

Signed and Sealed: October 10, 2014.

Thomas D. Freimuth, Commissioner