

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Zachary A. Gemar,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13R 849 & 14R 660

Decision and Order Reversing
County Board of Equalization's
Determination in Case No. 13R 849 and
Affirming its Determination in Case No.
14R 660

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel located at 2511 South 105th Avenue, Omaha, Nebraska, Douglas County, Nebraska. The Subject Property's legal description is: MULLENS ADD TO ROCKBROOK LOT 4 BLOCK 25 120 X 240.
2. The Douglas County Assessor assessed the Subject Property at \$344,700 for tax years 2013 and 2014.
3. Zachary A. Gemar (herein referred to as the "Taxpayer") protested this value to the Douglas County Board of Equalization (herein referred to as the "County Board") and requested an assessment of \$245,000 for tax year 2013 and \$250,000 for tax year 2014.
4. The County Board determined that the assessed value of the Subject Property was \$344,700 for tax year 2013 and \$334,700 for tax year 2014.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (herein referred to as the "Commission") for tax years 2013 and 2014.
6. A Single Commissioner hearing was held on May 22, 2015, at Omaha State Office Bldg., 1313 Farnam St., Conference Room 225, Omaha, Nebraska, before Commissioner Thomas D. Freimuth.
7. Zachary A. Gemar was present at the hearing.
8. G. Kevin Corcoran, an Appraiser employed by the Douglas County Assessor's Office, was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The County's Appraiser submitted Assessment Reports for tax years 2013 and 2014, each of which contains a Property Record File (herein referred to as "PRF") for the Subject Property. The 2013 PRF indicates that the County Board's \$344,700 determination for that tax year includes \$86,400 for land and \$258,300 for the 2,369 sq. ft. improvement component. The 2014 PRF indicates that the County Board's \$334,700 determination for

that tax year includes \$86,400 for land and \$248,300 for the 2,369 sq. ft. improvement component.¹

10. The PRFs indicate that the Taxpayer purchased the Subject Property for \$230,000 in March 2009.
11. The PRFs indicate that the Subject Property’s Ranch-style residence was built in 1957 and remodeled in 1988 -- notwithstanding this 1988 remodel notation, the PRFs assign an effective age of 56 years for tax year 2013 and 57 years for tax year 2014. The PRFs indicate that the County Assessor rates the improvement as “Average” in terms of quality and condition.
12. The 2014 Assessment Report contains the following property valuation history at page 12:

YEAR EFFECTIVE	DATE OF CHANGE	LAND VALUE	IMPROVE VALUE	TOTAL VALUE	REASON
2014	8/5/2014	\$86,400	\$248,300	\$334,700	County Board
2013	8/7/2013	\$86,400	\$258,300	\$344,700	County Board
2013	3/9/2013	\$86,400	\$258,300	\$344,700	County Assessor Reappraisal
2010	3/6/2010	\$86,400	\$143,600	\$230,000	County Assessor Reappraisal
2009	8/12/2009	\$86,400	\$158,600	\$245,000	County Board
2007	7/30/2007	\$86,400	\$249,800	\$336,200	County Board
2007	3/13/2007	\$86,400	\$259,800	\$346,200	County Assessor Reappraisal
2003	7/29/2003	\$86,400	\$158,400	\$244,800	County Board
2003	7/2/2003	\$86,400	\$167,000	\$253,400	County Board
2003	3/14/2003	\$86,400	\$167,000	\$253,400	County Assessor Reappraisal

13. The 2013 and 2014 Assessment Reports contain “Account Notes” which indicate that the County Assessor’s office inspected the basement of the Subject Property in April of 2014, which resulted in a reduction of the total square footage of the basement from 2,332 sq. ft. to 1,604 sq. ft.² This adjustment reduced the total model value of the Subject Property from \$344,700 to \$334,700.³
14. The Assessment Reports indicate that the County Assessor’s \$344,7000 (pre-inspection) and \$334,700 (post-inspection) model values for tax years 2013 and 2014 are based on a

¹ The Commission notes that page 11 of the 2014 Assessment Report contains a Market Calculation Detail document, which indicates that Subject Property’s gross living area (“GLA”) is 2,365 sq. ft. The 2014 PRF, however, indicates that the Subject Property’s GLA is 2,369 sq. ft., which is the same area disclosed on the 2013 PRF and the 2013 Market Calculation Detail document found at page 11 of the 2013 Assessment Report. The Commission assumes that the 2,365 sq. ft. GLA is correct, as it is included on 2014 Market Calculation Detail document prepared after the County Assessor’s inspection in April 2014 (see Account Notes at page 6 of 2014 Assessment Report).

² See, 2013 & 2014 Assessment Reports pgs. 6 & 11 (Account Notes and “Market Calculation Detail” documents pre & post-inspection). The Taxpayer asserted that the correct basement area is 1,410 sq. ft. rather than 1,604 sq. ft. as determined by the County Assessor’s Office during the April 2014 inspection (see Taxpayer’s Booklet, Tab 3). Mr. Corcoran, the County’s Appraiser, did not personally inspect the Subject Property, so he was unable to opine regarding this disparity.

³ See, 2013 & 2014 Assessment Reports pgs. 6 & 11 (Account Notes and “Market Calculation Detail” documents pre & post-inspection).

sales comparison approach mass appraisal model derived from market area arm's-length sales and multiple regression analysis.⁴ Multiple regression analysis assigns value to physical and locational characteristics of real property based on correlation of such characteristics with market area sales.⁵ The Assessment Reports each contain documents entitled "Market Calculation Detail" that set forth the value of each of the various mass appraisal model characteristics assigned to the Subject Property's improvement component for tax years 2013 and 2014.⁶

15. The Taxpayer stated that he holds a Construction Management degree and is engaged in the real estate development business.
16. The Taxpayer stated that he obtained a \$240,000 appraisal of the Subject Property in connection with the \$230,000 purchase thereof in March 2009. The Taxpayer did not submit this 2009 appraisal or a more recent appraisal at the hearing before the Commission. In support of his assertion that the \$230,000 purchase was a valid arm's length transaction, the Taxpayer submitted listing documents indicating that the Subject Property was listed over a period of more than 180 days by two different agents at several different prices starting at \$340,000. The listing documents indicate that the Subject Property is in the Westside School District (i.e., District 66), which is a desirable area of Omaha as indicated by the County Board's written Referee statements contained in the 2013 Assessment Report.
17. The Taxpayer asserted that the County overvalued the Subject Property with respect to tax years 2013 and 2014 for the following reasons: (1) failure to account for deferred maintenance and functional obsolescence; (2) failure to reflect real estate sales increases over the period 2009 to 2014 in Omaha and the Subject Property's market area as measured by the Zillow Home Value Index ("ZHVI") ; and (3) the Subject Property's assessed value is not equalized with alleged comparable properties.
18. The Taxpayer provided PRFs and/or screenshots from the Douglas County Assessor's website for several properties, both recently sold and unsold, analysis of sales and assessment information for these parcels, and exterior/interior photos of the Subject Property and alleged comparable properties.
19. The Assessment Reports submitted by the County include the PRFs for the Subject Property and the County Assessor's alleged comparable sale properties.
20. The County Board's Assessment Reports each contain the PRFs for the Subject Property and three alleged comparable sale properties, none of which are located in Land Economic Area ("LEA") 26840 where the Subject Property is situated. Two of the three alleged comparable sale properties for each tax year are the same. Additionally, the Commission notes that the County Assessor's alleged comparables are rated higher than the Subject Property in terms of condition and/or quality.
21. The 2013 Assessment Report states as follows: "Expanded comp search due to limited sales of similar properties in subdivision."

⁴ Assessment Reports, pg. 7.

⁵ *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers, 2010, at pgs. 416, 427.

⁶ Assessment Reports pg. 11 ("Market Calculation Detail").

STANDARD OF REVIEW

22. The Commission's review of the determination of the County Board of Equalization is de novo.⁷ "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."⁸
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."⁹ 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."¹⁰
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.¹¹
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹²

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.¹³
27. "Actual value, market value, and fair market value mean exactly the same thing."¹⁴
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.¹⁵
29. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶
30. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷
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

⁷ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

⁸ *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁹ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

¹² *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ 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).

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁸

VALUATION ANALYSIS

32. As indicated above, the Account Notes authored by the County Assessor's Office indicate that the characteristics of the Subject Property are not correct for tax year 2013.
33. Based on these Account Notes, together with the documents and statements submitted at the hearing, the Commission finds that it was unreasonable or arbitrary for the County Board to adopt County Assessor's opinion of value for the Subject Property due to an incorrect assignment of value to basement characteristics for tax year 2013.
34. The Taxpayer derived an opinion of value in the amount of \$275,000 for the Subject Property for tax years 2013 and 2014 based on the following: (1) a review of sale prices of alleged comparable properties; (2) consideration of multiple deferred maintenance items and functional obsolescence; (3) consideration of his \$230,000 purchase in 2009; and (4) consideration of various real estate sales increase trends over the period 2009 to 2014 as measured by the Zillow Home Value Index ("ZHVI"), including an indication that four bedroom homes in zip code 68124 where the Subject Property is located increased only 1.1% from \$283,200 to \$286,300 over the period August 2009 to May 2014.
35. The Taxpayer's opinion of value can best be described as an attempted sales comparison approach. An opinion of value under the sales comparison approach is developed by analyzing closed sales, listings, or pending sales of properties that are similar to the subject property,¹⁹ and use of a systematic procedure.²⁰ This approach also requires that analyzed properties must be comparable to the Subject Property, and receive adjustments for any differences.²¹
36. A sale property is comparable to a parcel under consideration for assessment purposes when it possesses similar physical, functional, and locational characteristics.²² If an alleged comparable property has different physical, functional, and locational characteristics, then adjustments must be made to account for these differences.²³

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

¹⁹ *The Appraisal of Real Estate*, Appraisal Institute, at 297 (13th ed. 2008).

²⁰ *Id.* at 301-302.

²¹ *Id.*

²² 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).

²³ 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).

37. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.²⁴ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.²⁵
38. The Taxpayer's opinion of value was determined in part by use of unadjusted sales of several alleged comparable parcels and Zillow sales increase data over the period 2009 to 2014. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to meet the requirements of the sales comparison approach. The Taxpayer's approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.²⁶ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal technique 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.
39. The Commission finds that the Taxpayer's approach for determining the actual value of the Subject Property does not meet the requirements of the sales comparison approach.²⁷
40. With respect to the Taxpayer's deferred maintenance and functional obsolescence assertions, the Commission notes that the County Assessor assigned an Average condition rating to the Subject Property based on an interior/exterior inspection in April 2014. Inferior condition issues can be addressed via the assignment of a rating less than Average.
41. The Commission finds that the best evidence of actual value of the Subject Property for tax years 2013 should be \$334,700, which reflects the corrected basement square footage.
42. The 2014 Assessment Report indicates that the County Board adopted the County Assessor's \$334,700 opinion of value which was calculated through the use of a sales comparison approach. The sales comparison approach is a statutorily permissible method for determining the actual value of real property for property tax purposes.²⁸
43. The Commission finds that the Taxpayer did not provide clear and convincing evidence that the County Board's \$334,700 determination was unreasonable or arbitrary for tax year 2014.

GENERAL EQUALIZATION LAW

44. "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."²⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁰ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing

²⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁵ *Id.*

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

²⁷ See, *The Appraisal of Real Estate*, Appraisal Institute, at 301-302 (13th ed. 2008).

²⁸ See, Neb. Rev. Stat. §77-112 (Reissue 2009).

²⁹ *Neb. Const.*, Art. VIII, §1.

³⁰ *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.³¹

45. 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.³²
46. 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.³³ 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.³⁴
47. The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁵ 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].”³⁶ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”³⁷
48. “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.”³⁸
49. “Misclassifying property may result, ... in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief.”³⁹

EQUALIZATION ANALYSIS

50. As indicated above, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;⁴⁰ 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;⁴¹ or (3) similar properties were assessed at materially different values due to misclassification of components of the Subject Property or similar components of other properties.⁴²
51. For equalization analysis purposes, the Taxpayer submitted PRFs and/or screenshots from the Douglas County Assessor’s website for several parcels west of Omaha’s 72nd

³¹ *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).

³² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁴ *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).

³⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³⁷ *Id.* at 673, 94 N.W.2d at 50.

³⁸ *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

³⁹ *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

⁴⁰ See, *Scribante v. Hitchcock County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴¹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴² See, *Beynon Farm Products Corporation v. Board of Equalization of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

Street. Based on a review of the available PRFs, none of these parcels are located in Land Economic Area (“LEA”) 26840 where the Subject Property is situated.⁴³

52. The Commission does note that the Taxpayer submitted a PRF for the property located at 2812 South 105th Avenue, which appears to be in close proximity to the Subject Property (2511 South. 105th Avenue). The PRF for this parcel, however, indicates that it is located in LEA/Neighborhood Extension 33840. The PRF also indicates that its above-ground GLA is 1,543 sq. ft. in comparison to the Subject Property’s 2,465 sq. ft. GLA, a significant difference.
53. A review of the PRFs for the other properties submitted by the Taxpayer indicates that they are not truly comparable with the Subject Property. The improvement characteristics of these properties vary in comparison to the Subject Property, especially with respect to location. 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 properties submitted for consideration are not substantially similar to the Subject Property for purposes of equalization review/relief.
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 years 2013 and 2014. 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.
56. Based on a review of the Taxpayer’s PRFs submitted for consideration, together with a review of documents and statements submitted at the hearing, the Commission further finds that there is not clear and convincing evidence that characteristics of these parcels were misclassified for purposes of equalization review/relief.

CONCLUSION

57. 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.
58. With respect to tax year 2013, the Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.
59. With respect to tax year 2014, the Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board was unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

⁴³ The Commission notes that the term “LEA” is referenced under the designation “Nbhd Ext” (short for “Neighborhood Extension”) on some of the PRFs submitted by the Taxpayer. With respect to parcels submitted for consideration by the Taxpayer for which website screenshots only were submitted, the Commission is unable to determine LEA or Neighborhood Extension information with specificity.

1. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2013 is vacated and reversed.
2. The Decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2014 is affirmed.
3. That the taxable value of the Subject Property for tax years 2013 and 2014 is:

Land	\$ 86,400
<u>Improvements</u>	<u>\$248,300</u>
Total	\$334,700

4. 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.).
5. Any request for relief, by any party, which is not specifically provided for by this order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This decision shall only be applicable to tax years 2013 and 2014.
8. This order is effective on July 2, 2015.

Signed and Sealed: July 2, 2015.

Thomas D. Freimuth, Commissioner