

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Walter B. Smith et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17C 0534 & 18C 0581

Decision and Order Affirming the
Determinations of the Douglas County
Board of Equalization

Case Nos: 17C 0535, 18C 0580, & 19C
0439

Decision and Order Reversing the
Determinations of the Douglas County
Board of Equalization

For the Appellant:

Sean T. Mullen,
Sean T. Mullen P.C., L.L.O.

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property in Case Nos. 17C 0534, 17C 0535, 18C 0580, 18C 0581 & 19C 0439 are commercial parcels located in Douglas County. The parcel in Case Nos. 17C 0534 & 18C 0581 is improved with a 76,538 square foot horse arena. The legal description and Property Record File (PRF) for the Subject Property in Case Nos. 17C 0534 & 18C 0581 (the Arena) is found at Exhibits 5 & 6. The parcel in Case Nos. 17C 0535, 18C 0580, & 19C 0439 is improved with a 36,000 square foot veterinary hospital. The legal description and Property Record File (PRF) for the Subject Property in Case Nos. 17C 0535, 18C 0580, & 19C 0439 (The Veterinary Hospital) are found at Exhibits 7 & 8.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property in Case Nos. 17C 0534 & 18C 0581 was \$1,851,400 for tax years 2017 and 2018. Walter B. Smith et al. (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the

County Board) and requested an assessed valuation of \$1,470,607 for tax years 2017 and 2018. The County Board determined that the taxable value of the Subject Property for tax years 2017 and 2018 was \$1,851,400.¹

The Douglas County Assessor determined that the assessed value of the Subject Property in Case Nos. 17C 0535, 18C 0580, & 19C 0439 was \$1,521,700 for tax years 2017, 2018, and 2019. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$1,082,800 for tax years 2017 and 2018. The County Board determined that the taxable value of the Subject Property for tax years 2017, 2018, and 2019 was \$1,521,700.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 2, 2019. Prior to the hearing, the parties exchanged exhibits and at the hearing the parties stipulated to the receipt of exchanged exhibits 1 through 11, the Commission also received exhibit 12 at the hearing.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ When the Commission considers an appeal of a decision of a County Board of Equalization, 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

¹ E1, E2.

² E3, E4, E11.

³ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "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." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner* at 283, 811.

⁵ *Id.*

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

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 The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁹

In an appeal, the Commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹⁰ The Commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

IV. VALUATION

A. Law

Under Nebraska law,

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.¹³

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁹ *Bottof v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

“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.”¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

These appeals involve two parcels of property located off West Dodge Road and Skyline Drive in Douglas County, Nebraska. The parcel in Case Nos. 17C 0534 and 18C 0581 is improved with a 76,538 square foot horse arena (the Arena). The parcel in Case Nos. 17C 0535, 18C 0580, & 19C 0439 is improved with a 36,000 square foot veterinary hospital (The Veterinary Hospital). The Taxpayer did not contest the determination of the land value but alleged that the County Board utilized incorrect characteristics and applied the incorrect factors in the County Assessor’s Computer Assisted Mass Appraisal (CAMA) system when determining the assessed value of the improvement components of the Subject Properties. For the Veterinary Hospital the Taxpayer alleged that the Assessor used the incorrect age for the main building, resulting in incorrect depreciation being applied, and that the Assessor did not depreciate the “Add Ons” correctly, resulting in a valuation that was too high. For the Arena the Taxpayer alleged that the County Board applied the incorrect base value per square foot, the incorrect number of square feet for the HVAC adjustment, and incorrect depreciation.

Two witnesses testified at the hearing: Linda Rowe and Travis M. Smith. Ms. Rowe is the senior appraiser, commercial, and commercial real estate manager for the Douglas County Assessor/Register of Deeds Office and was responsible for appraising the Subject Properties for the tax years in question. Ms. Rowe holds a State Assessor’s certificate but is not a licensed

¹⁴ *Id.*

¹⁵ *Omaha Country Club* at 180, 829.

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

appraiser. Ms. Rowe testified regarding the methodology used in the assessments. Travis M. Smith is the general manager of the Subject Properties, which are owned by his family. In addition to being the general manager of both of the Subject Properties, Mr. Smith testified that he was directly involved in the construction of the Arena property but was not the general contractor. Mr. Smith does not hold a State Assessor's certificate and is not a licensed appraiser. Both witnesses testified regarding the characteristics of the Subject Properties and the use of those characteristics in the County Assessor's valuation model and the Marshall and Swift valuation service.

The values for both of the Subject Properties were set in 2017 and carried forward for tax years 2018 and 2019. The values were determined with the County Assessor's CAMA system, which used the cost factors from the Marshall Valuation Service for determining value. The value for the the Veterinary Hospital property was reduced by the County Board at the protest hearing and the resulting value was carried forward unchanged for tax years 2018 and 2019.

The Taxpayer alleged that the County Assessor used the incorrect age for the buildings on the Veterinary Hospital parcel resulting in incorrect depreciation being applied and did not depreciate the "Add Ons" correctly, resulting in a valuation that was too high. Ms. Rowe testified that she agreed with the County Assessor's methodology used in determining the value for the Veterinary Hospital Parcel prior to action by the County Board, but admitted that the Veterinary Hospital building had a typical life expectancy of 35 years and was 33 years old as of the 2017 assessment date when values were determined.¹⁹ Ms. Rowe testified that the same depreciation amounts were applied to the "Add Ons" that were applied to the main structure and that the County's CAMA system did not apply separate depreciation percentages.

The Marshall Valuation Service indicates that based on the 35 year typical life expectancy for the Veterinary Hospital and the 33 year effective age the depreciation applied to the buildings should be 76% and the depreciation for fixtures and equipment should be 80%.²⁰ The Property Record File (PRF) for the Veterinary Hospital parcel indicates that there are four buildings (the 36,000 square foot veterinary hospital, two 9,100 square foot low cost utility buildings, and a 5,664 square foot shed) and nine fixtures (light mercury pole and brk).²¹ Applying the appropriate depreciation percentages would result in a total depreciation of \$2,917,700 which

¹⁹ See E9:2

²⁰ E9:4-5.

²¹ E9:10.

when subtracted from the County Assessor's total Replacement Cost New (RCN) of \$3,838,743 would result in a Replacement Cost New Less Depreciation (RCNLD) of \$921,043.

The Taxpayer ultimately alleged that, in determining the value of the Arena, the County Assessor used the incorrect number of square feet for the HVAC adjustment and applied the incorrect per square foot amount to determine the base value. Ms. Rowe testified that she had observed HVAC equipment on the outside of the building which necessitated the addition of an HVAC adjustment for the Arena. Mr. Smith testified that the actual arena space, secondary arena space, and holding pens were covered by a "wet over dry" sprinkler system that did not require the area to be heated to maintain sprinkler coverage; it was therefore not covered by the HVAC system observed on the outside of the Arena Property. Mr. Smith testified that the actual arena space, secondary arena space, and holding pens constitute 62,600 square feet of the Arena Property.

Ms. Rowe was asked why the County Assessor applied a base per square foot rate of \$25.37 per square foot rather than \$19.90 as indicated in the Calculator Method page for Arenas.²² Ms. Rowe testified that the CAMA system applied multipliers to the square foot amounts found in the Calculator Method charts to account for the differences in costs for different parts of the country but that she was not sure which multipliers were applied. Additionally, the per square foot costs found in Exhibit 12 were not the costs utilized in the County Assessor's valuation model as that model was developed for the 2017 assessment year. Finally, Ms. Rowe testified that in her opinion the Arena should be classified as a good rather than average type arena based on the characteristics.

The Taxpayer demonstrated that the HVAC adjustment should only have been applied to 13,938 square feet of the Arena rather than the entire 76,538. The Commission's review of the evidence and testimony, however, supports Ms. Rowe's testimony that the Arena is a good rather than average type Class S arena for assessment purposes. Changing the classification of the Arena to good would significantly increase the per square foot base value (just increasing from the \$25.37 to the \$33.75 without multipliers based on the documents relied upon by the Taxpayer)²³ and increase the life expectancy from 25 to 30 years, reducing the applicable depreciation from 40% to 29% based on the Arena's age.²⁴ The record indicates that even with

²² E12.

²³ E12.

²⁴ E10:2-3.

the reduction in square footage for the HVAC adjustment these changes would result in a value higher than that determined by the County Assessor and upheld by the County Board at the protest level. The County Board did not provide notice of a higher taxable value and the intent to offer proof in support of a higher value, as required by the Commission's rules and regulations, and the Commission will therefore not consider a value higher than that determined by the County Board.²⁵

The Taxpayer did not argue with the assessment model utilized by the County Assessor's CAMA system but rather that the factors input into the model for the Subject Properties were incorrect, resulting in values that did not reflect actual value. The Taxpayer has demonstrated for both the Veterinary Hospital and the Arena property that the County Assessor applied at least one factor in the CAMA system incorrectly when determining assessed values for the tax years in question. The Taxpayer presented information to demonstrate the result of correcting those incorrect factors for the Veterinary Hospital parcel, demonstrating that the value determined by the County Board was arbitrary and unreasonable and what the correct value should be. In the case of the Arena property, the correct value is higher than any previously noticed value and the Commission is barred by rule from considering such a value.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission finds in Case Nos. 17C 0535, 18C 0580, & 19C 0439 that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. In Case Nos. 17C 0534 & 18C 0581 the Commission finds that there is not clear and convincing evidence that the value of the Subject Property is less than that determined by the County Board.

For all of the reasons set forth above, in Case Nos. 17C 0535, 18C 0580, & 19C 0439 the decision of the County Board is vacated and reversed, and in Case Nos. 17C 0534 & 18C 0581 the appeal of the Taxpayer is denied.

²⁵ Title 442 Neb. Admin. Code, ch 5 §016.02A (6/11).

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 17C 0535, 18C 0580, & 19C 0439 for tax years 2017, 2018 and 2019 are vacated and reversed.
2. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 17C 0534 & 18C 0581 for tax years 2017 and 2018 are affirmed.
3. The taxable value of the Subject Property in Case Nos. 17C 0535, 18C 0580, & 19C 0439 for tax year 2017, 2018 and 2019 is:

Land	\$ 166,500
<u>Improvements</u>	<u>\$ 921,043</u>
Total	\$1,087,543

4. The taxable value of the Subject Property in Case Nos. 17C 0534 & 18C 0581 for tax year 2017 and 2018 is:

Land	\$ 416,000
<u>Improvements</u>	<u>\$1,435,400</u>
Total	\$1,851,400

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2017, 2018 and 2019.

9. This Decision and Order is effective for purposes of appeal on May 18, 2021.²⁶

Signed and Sealed: May 18, 2021

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.