

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Joan M. Goodrich,  
Appellant,

v.

Greeley County Board of Equalization,  
Appellee, and

Raymond L. and Darlene R. Hill,  
Appellee.

Case No: 17R 0009

Decision and Order Vacating and Reversing  
the Decision of the Greeley County  
Board of Equalization

**For the Appellant:**

Heather L. Sikyta,  
Sikyta Law Office

**For the Appellees:**

Greeley County Board of Equalization,  
Michael A. Goldfish, Chairman,

Raymond L. and Darlene R. Hill,  
*No Appearance*

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in the village of Scotia, Greeley County, Nebraska. The parcel is improved with a 1,516 square foot home and a tool shed. The legal description and property record card for the Subject Property are found at Exhibit 17.

**II. PROCEDURAL HISTORY**

Joan M. Goodrich, Greeley County Assessor (the County Assessor), determined that the assessed value of the Subject Property was \$92,940 for tax year 2017. Raymond L. and Darlene R. Hill (the Taxpayer) protested this assessment to the Greeley County Board of Equalization (the County Board) and requested an assessed valuation of \$86,315. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$90,000.<sup>1</sup>

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<sup>1</sup> Ex 1.

The County Assessor appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 20, 2018, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 through 30 were admitted by stipulation or in the course of the hearing.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>2</sup> 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."<sup>3</sup> That presumption remains until there is competent evidence presented to the contrary.<sup>4</sup>

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.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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."<sup>7</sup> 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

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<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. 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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Phelps Cty. Bd. of Equal v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

knowledge in the evaluation of the evidence presented to it.”<sup>8</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>

#### 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.<sup>10</sup>

“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.”<sup>11</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>12</sup> 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.<sup>13</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>14</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>15</sup>

##### B. Summary of the Evidence

Two witnesses testified at the hearing: Joan M. Goodrich and Michael A. Goldfish. Ms. Goodrich is the Greeley County Assessor, and she has served in that capacity since 2012. She has worked in various capacities related to the assessment of property in Greeley County since 1989. She has held the State Assessor Certificate since 1990, and also holds credentials as a Certified Residential Appraiser. Mr. Goldfish is a member of the County Board and he has

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<sup>8</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>9</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>11</sup> *Id.*

<sup>12</sup> *Omaha Country Club* at 180, 829.

<sup>13</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>14</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

served in that capacity for approximately twenty years, including all times material to this appeal.

Ms. Goodrich testified that she valued the Subject Property using a sales comparison approach, which operates by taking properties sold during a two-year window prior to the assessment date and comparing them to other properties within the same taxing jurisdiction using a Computer Assisted Mass Appraisal System (the CAMA System). Characteristics of properties are entered into the CAMA System, which indicates a value based on those characteristics. To calculate the specific valuation of the Subject Property, the County Assessor put information about the Subject Property into the CAMA System, after which the characteristics of the Subject Property were compared to other properties within the county. Following the Taxpayer's protest, Ms. Goodrich performed an external "drive-by" inspection of the Subject Property; she was unable to testify with certainty as to the date of the last internal inspection. Based on the inspection, information provided by the Taxpayer, and the information provided by the CAMA System, the County Assessor determined the value of the Subject Property to be \$92,940 for tax year 2017: \$91,615 for the house, \$1,225 for the land, and \$100 for a tool shed.<sup>16</sup>

In support of this valuation, the County Assessor presented the property record cards of three similar properties from Scotia, ranging in assessed value from \$100,365 to \$103,335.<sup>17</sup> She also presented a list of recent sales from Scotia, ranging in total parcel sales price from \$20,000 to \$155,000.<sup>18</sup> The County Assessor testified that all residences in Scotia were subject to an 8% increase in assessed value to comply with the statutory requirement that residential property be assessed at ninety-two to one hundred percent of actual value.<sup>19</sup> This 8% increase applied only to the residences and garages, not to land or outbuildings. This change in valuation was supported by the Property Tax Administrator (the PTA) at the Commission's Statewide Equalization hearings in 2017. The PTA concluded that once the 8% increase was applied, the valuations for

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<sup>16</sup> Ex 17:1.

<sup>17</sup> Exs 18-20.

<sup>18</sup> Ex 21. We note that some of the sales contained in the exhibit are not within the statutory two-year window for the residential sales file; the testimony of the County Assessor established that these were not considered in setting valuations for tax year 2017.

<sup>19</sup> See Neb. Rev. Stat. §77-5023 (Reissue 2018). The 8% increase in valuation for the residence represents the entire change in assessed value from tax year 2016 to tax year 2017 (less a \$160 reduction in the assessed value of a tool shed).

Scotia met the statutory requirements and that the quality of assessment met generally accepted mass appraisal practices.<sup>20</sup>

The County Assessor presented information on her valuation methodology for the Subject Property to the County Board in the course of the protest hearing. She testified that the County Board made its decision to reduce the valuation of the Subject Property because the board members believed the property “might bring that if it was sold.” She further testified that, in her opinion, the adjustment was not based on the facts and circumstances as presented to the County Board, failed to create a uniform assessment for Greeley County, and was arbitrary.

Mr. Goldfish testified that he was familiar with the Subject Property and with property values in the area, which is the district he represents on the County Board. He testified that the Subject Property is located on a busy block near an elementary school and has a single car garage built close to the street, which limits available parking. He also testified that he had been told that there had been water in the basement of the Subject Property, although he did not personally observe water damage when visiting the property. Mr. Goldfish testified that the County Board considered these conditions and their probable impact on the market value of the Subject Property in adjusting the value, but he did not provide specific testimony as to how the County Board quantified the impact of the conditions when making their independent determination of value.

The conditions noted by Mr. Goldfish and considered by the County Board, such as the busy street, the limited parking, and a history of flooding, could potentially have a negative impact on the Subject Property’s market value. But the record contains no evidence as to how the County Board quantified the impact of those conditions when it reduced the value from the amount indicated by the County Assessor’s sales approach. The County Assessor provided clear and convincing evidence that the original assessment was based on local sales, prevalent market conditions, and the specific characteristics of the Subject Property. Accordingly, we should reverse and vacate the decision of the County Board.

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<sup>20</sup> Ex 22:3-6.

**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 determination. The Commission also finds that there is clear and convincing evidence that the County Board’s decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed.

**VI. ORDER**

IT IS ORDERED THAT:

1. The decision of the Greeley County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 1,225
<u>Improvements</u>	<u>\$91,715</u>
Total	\$92,940

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Greeley County Treasurer and the Greeley County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.

7. This Decision and Order is effective for purposes of appeal on March 8, 2019.<sup>21</sup>

Signed and Sealed: March 8, 2019

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Robert W. Hotz, Commissioner

SEAL

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Steven A. Keetle, Commissioner

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<sup>21</sup> 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.