

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joan M. Goodrich,
Appellant,

v.

Greeley County Board of Equalization,
Appellee, and

Leroy and Lila Studley,
Appellee.

Case No: 17R 0012

Amended 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,

Leroy and Lila Studley,
Pro se

NOTE: The following final order was originally issued by the Commission on March 8, 2019. However, due to an administrative oversight, the order was not mailed to all of the appropriate parties. The order is being amended to reflect an effective appeal date of March 28, 2019, which is the date the order was mailed to all of the parties. This amendment does not substantively alter the findings or conclusions of the Commission.

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 Wolbach, Greeley County, Nebraska. The parcel is improved with a 1,144 square foot home and a detached garage. The legal description and property record card for the Subject Property are found at Exhibit 6.

II. PROCEDURAL HISTORY

Joan M. Goodrich, Greeley County Assessor (the County Assessor), determined that the assessed value of the Subject Property was \$33,910 for tax year 2017. Leroy and Lila Studley (the Taxpayer) protested this assessment to the Greeley County Board of Equalization (the County Board) and requested an assessed valuation of \$25,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$30,000.¹

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 21, 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 38 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*.² 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."³ That presumption remains until there is competent evidence presented to the contrary.⁴

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

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

¹ Ex 1.

² 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).

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

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

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁷ 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.”⁸ The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

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.¹⁰

“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.”¹¹ “Actual value, market value, and fair market value mean exactly the same thing.”¹² 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.¹³ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁵

B. Summary of the Evidence

⁷ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

⁸ Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

⁹ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹⁰ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹¹ *Id.*

¹² *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹³ Neb. Rev. Stat. §77-131 (Reissue 2018).

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

¹⁵ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

Two witnesses testified at the hearing: Joan M. Goodrich and Lila Studley. 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. Ms. Studley is a co-owner of the Subject Property along with her husband, Leroy Studley. She is familiar with its characteristics, but does not have any training or experience in the field of assessment or appraisal of real property.

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, and 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 \$33,910 for tax year 2017: \$31,080 for the house and garage, \$2,730 for the land, and \$100 for a tool shed.¹⁶

In support of this valuation, the County Assessor presented the property record cards of three similar properties from Wolbach, ranging in assessed value from \$34,495 to \$40,585.¹⁷ She also presented a list of recent residential sales from Wolbach ranging in total parcel sale price from \$5,000 to \$79,000.¹⁸ The six sales that occurred between October 1, 2014, and September 30, 2016, were used to set the valuation of residential parcels in Wolbach for tax year 2017. The County Assessor testified that all residences in Wolbach were subject to a 6% increase in assessed value to comply with the statutory requirement that residential property be assessed at

¹⁶ Ex 6:1.

¹⁷ Exs 24 through 26.

¹⁸ Ex 27.

ninety-two to one hundred percent of actual value.¹⁹ This 6% 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 6% increase was applied, valuations for Wolbach met the statutory requirements and that the quality of assessment met generally accepted mass appraisal practices.²⁰

The County Assessor testified that she was unaware of the basis for the County Board's determination as to the value of the Subject Property, although the Taxpayer presented the County Board with property record cards (PRCs) for certain other parcels in the area.²¹ She testified that she did not apply any economic depreciation across the board to residential property in Wolbach because sales data indicated that homes were undervalued rather than overvalued. She further testified that, in her opinion, the adjustment made by the County Board 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.

Ms. Studley testified as to her opinion that properties in Wolbach should receive some form of economic depreciation due to changes in the town such as the absence of a grocery store, the lack of an elementary or high school, and a general lack of other services and amenities. She also urged the Commission to consider several comparable properties, including the Gilpin property,²² in determining the value of the Subject Property. She testified that she provided the PRC for the Gilpin property to the County Board during its deliberations over the value of the Subject Property. The County Board subsequently argued (but provided no further evidence) that it had attempted to equalize the Subject Property and the Gilpin property when determining the value of the Subject Property.

The Gilpin property sold on December 23, 2015, for \$30,000,²³ and the house is similar to the Subject Property. Both have been deemed by the County Assessor to have an effective age of

¹⁹ See Neb. Rev. Stat. §77-5023 (Reissue 2018). This 6% increase was applied to the replacement cost new less depreciation (RCNLD) indicated by the CAMA System. Due to a past decision of the County Board reducing the valuation of the Subject Property to less than the RCNLD (see Ex 6:1), the net increase on the Subject Property was nearly 36% for tax year 2017.

²⁰ Ex 30:3-6.

²¹ Exs 7, 8, 9.

²² The PRC for the Gilpin property is found at Ex 38:13-15.

²³ Ex 38:12.

52 years and are assessed with 79% physical depreciation. The improvements on both parcels are deemed by the County Assessor to be of fair quality and average condition.²⁴ The above ground area of the Subject Property is only 23 square feet larger.²⁵ Although the Subject Property has a slightly higher base cost of construction on a per-square-foot basis, this is counterbalanced by the additional costs associated with the Gilpin property's larger basement.²⁶ The Gilpin property also has an enclosed porch with solid walls, which causes the total undepreciated cost of its miscellaneous improvements to exceed that of the Subject Property by \$4,125.²⁷ Applying 79% depreciation to the total replacement cost new (the RCN) of the Subject Property results in \$22,030,²⁸ and applying the same depreciation to the total RCN of the Gilpin property results in \$23,010.²⁹

Much of the difference in value relates to the properties' garages; garages have a different base cost and depreciate on a different schedule than residences. The Gilpin property's attached 484 square foot garage, built in 1930, has a replacement cost of \$21.26 per square foot (\$10,290 total), but is depreciated at 83% to \$1,750.³⁰ The Subject Property's detached 864 square foot garage, built in 1991, has a replacement cost of \$22.21 per square foot (\$19,189 total) and is depreciated at 62% to \$7,290.³¹ When these amounts are added to the depreciated total RCN, the result is \$29,320 for the Subject Property and \$24,760 for the Gilpin property; this amount is known as the replacement cost new less depreciation (the RCNLD). As the County Assessor noted in her testimony, the 6% across-the-board increase in residential values in Wolbach applied to houses and garages, but not to land. After this increase, the adjusted RCNLD of the Subject Property is \$31,080 and the adjusted RCNLD of the Gilpin property is \$26,245.³²

The remainder of the difference between the properties relates to the value of the land. The Subject Property has a 21,000 square foot lot, and the Gilpin property has only a 7,000 square

²⁴ Ex 6:2, Ex 38:14.

²⁵ *Id.*

²⁶ 728 square feet as compared with the Subject Property's 260 square feet. Compare Ex 6:2 with Ex 38:14.

²⁷ *Id.*

²⁸ Total RCN (\$104,915) – 79% Depr (\$82,885) = \$22,030; see Ex 6:2.

²⁹ Total RCN (\$109,570) – 79% Depr (\$86,560) = \$23,010; see Ex 38:14. The modest difference in cost per square foot was not discussed at the hearing, but presumably relates to the specific characteristics of the garages, including the distinction between attached and detached garages.

³⁰ Ex 38:14.

³¹ Ex. 6:2.

³² Ex 6:2, 38:14.

foot lot.³³ The first 14,000 square feet of each parcel is valued at \$0.16 per square foot, and additional square footage up to 43,560 (one acre) is valued at \$0.07 per square foot. This results in a total land value of \$1,120 for the Gilpin property as opposed to \$2,730 for the Subject Property. Accordingly, the differences in value between the Subject Property and the Gilpin property are related to quantifiable differences in the characteristics of the two parcels. Although the homes themselves are quite similar, the Subject Property has a garage nearly twice the size, and built 61 years more recently; it also sits on a lot three times the size of the Gilpin property's lot. Because of these differences in the characteristics of the two properties, equalization between them would require careful analysis to account for the differences. There is no evidence that the County Board engaged in such analysis.

At the hearing, Ms. Studley opined that properties in Wolbach should receive some form of economic depreciation due to changes in the town such as the absence of a grocery store, the lack of an elementary or high school, and a general lack of other services and amenities. Although we are not indifferent to those concerns, Ms. Studley does not have any training or experience in the field of assessment or appraisal of real property in order to give an opinion to quantify these differences. The statistical data compiled by the County Assessor indicates that homes in Wolbach were generally assessed at only 88% of their actual market value prior to the 6% increase to the valuation of residences. Neither the Taxpayer nor the County Board presented any empirically derived data to support a reduction for economic depreciation, nor is there any evidence that such a reduction has been uniformly applied throughout Wolbach or elsewhere in the county.

The record contains no evidence of the basis for the County Board's determination except circumstantial evidence that the County Board intended to equalize the Subject Property with the Gilpin property. As discussed above, such a change is inappropriate due to the superior characteristics of the Subject Property. 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.

³³ Compare Ex 6:1 with Ex 38:13.

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	\$ 2,730
<u>Improvements</u>	<u>\$31,180</u>
Total	\$33,910

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 (Reissue 2018).
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 28, 2019**.³⁴

³⁴ 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.

Signed and Sealed: **March 28, 2019**

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner