

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Theresa A. Perry,
Appellant,

v.

Madison County Board of Equalization,
Appellee.

Case Nos: 18C 0218 & 18C 0219

Decision and Order Affirming the Decisions
of the Madison County Board of
Equalization

Background

1. Both of the appeals in the above referenced cases relate only to tax year 2018.
2. The Subject Property in Case No. 18C 0218 is an apartment building at 106 Gold Strike Drive, in Norfolk, Madison County, Nebraska. The parcel ID is 590099639.
3. The Subject Property in Case No. 18C 0219 is an apartment building at 104 Gold Strike Drive, in Norfolk, Madison County, Nebraska. The parcel ID is 590099655.
4. In Case No. 18C 0218, the Madison County Assessor (the County Assessor) assessed the Subject Property at \$366,419, the Taxpayer protested the assessment and requested a value of \$235,166 and the Madison County Board of Equalization (the County Board) determined that the taxable value was \$305,697.
5. In Case No. 18C 0219, the County Assessor assessed the Subject Property at \$366,419, the Taxpayer protested the assessment and requested a value of \$235,166 and the County Board determined that the taxable value was \$348,512.
6. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on May 29, 2019, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
8. Theresa Perry was present at the hearing.
9. Jeff Hackerott, Madison County Assessor, was present at the hearing for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. The Commission’s review of a determination of the County Board of Equalization is de novo.²

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

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

12. 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.”³ 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.”⁴
13. 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
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. Both Subject Properties are 12 unit apartment buildings.
2. The Taxpayer asserts that the Subject Property was assessed higher than an 84 unit apartment building known as Meadow Ridge, in the same market area.⁹
3. According to a document provided by the Taxpayer, the Subject Property is 20 years older than the Meadow Ridge apartments. The Taxpayer provided ten photographs of the interior and exterior of the Subject Properties demonstrating cracking in the concrete parking lot, concrete repairs to an apartment entrance, and the general condition of the interior of one or more of the apartment units.
4. Jeff Hackerott testified that the Meadow Ridge apartments were assessed as rent-restricted properties under Section 42 of the Internal Revenue Code. As such, the property would be restricted by a Land Use Restriction Agreement (LURA). He asserted

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).

⁴ *Id.*

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).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 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 Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ The taxpayer provided the property record card for Meadow Ridge Apartments, a multi-unit apartment complex located at 808 East Benjamin Avenue, Norfolk, Nebraska.

that Meadow Ridge was therefore not a comparable property to the Subject Property because the Subject Property was not a rent-restricted property.

5. At the conclusion of the hearing, the Commission notified the parties that the record would remain open for 60 days in order for the taxpayer to show that the Meadow Ridge property was not subject to a LURA. The taxpayer was advised that LURAs are filed with the Nebraska Department of Revenue. The Commission was subsequently provided with a copy of a LURA relating to Meadow Ridge.
6. 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.
7. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 are affirmed.
2. The taxable value of the Subject Property in Case No. 18C 0218 for tax year 2018 is \$305,697.
3. The taxable value of the Subject Property in Case No. 18C 0219 for tax year 2018 is \$348,512.
4. This Decision and Order, if no further action is taken, shall be certified to the Madison County Treasurer and the Madison County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2018.
8. This Decision and Order is effective on August 25, 2020.

Signed and Sealed: August 25, 2020

Robert W. Hotz, Commissioner