

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

MATTHEW J. MALY
APPELLANT,

CASE NO: 19R 0006

V.

BUTLER COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE BUTLER COUNTY
BOARD OF EQUALIZATION

For the Appellant:
Matthew J. Maly,
Pro Se

For the Appellee:
Julie L. Reiter,
Butler County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Butler County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 2 pages 3 and 4.

II. PROCEDURAL HISTORY

The Butler County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$2,440 for tax year 2019. Matthew J. Maly (the Taxpayer) protested this assessment to the Butler County Board of Equalization (the County Board) and requested a taxable value of \$90. The County Board determined that

the taxable value of the Subject Property for tax year 2019 was \$2,440.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 11, 2021. Prior to the hearing, the parties exchanged exhibits. Exhibits 1 and 2 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination 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 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

¹ Exhibit 1.

² 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).

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

⁴ *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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.⁸

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.⁹ The Commission may take notice of judicially cognizable facts, 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

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

⁶ *Omaha Country Club v. Douglas County 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 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).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT 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.¹²

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

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

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

except as otherwise provided in or permitted by the Nebraska Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰ 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.²¹ 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.²² If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The parties do not dispute the assessment of the land component of the Subject Property, or the assessment of the improvement located on

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *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).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

the Subject Property (hereinafter the Improvement) if it is subject to real property tax.

The PRF shows the assessment of an 89 square foot one-story building with siding and a galvanized metal roof by the County Assessor.²⁵ The photograph in the PRF shows what looks like what might be colloquially called a tiny house with a roof, siding, windows, and a door.²⁶ The photograph also shows wheels attached to the tiny house and reflectors as well as detached stairs.²⁷ The Assessor testified that she did not price the components of the trailer or the wheels, only the components of the structure built onto the trailer were priced out and assessed.

The Taxpayer testified that he purchased a trailer and then built the structure in the photograph as an addition to the trailer. The Taxpayer moved the Improvement onto the Subject Property some time prior to the assessment date of January 1, 2019. There is no evidence that the Improvement was operated, towed, or parked on the highways of Nebraska during 2019. As of the assessment date the Taxpayer lived in the Improvement and used it as his primary residence. The Improvement has a kitchen as well as a loft area accessible by ladder and used as a sleeping area and for storage. The Improvement was not registered for highway use as of the assessment date, however the Taxpayer testified that the Improvement had been registered in the past and that he registered it for highway use as of July 3, 2019.²⁸

The Taxpayer alleges that the Improvement on the Subject Property is exempt from real property taxation.

²⁵ E2:4

²⁶ E2:3

²⁷ *Id.*

²⁸ See, E2:20-21

B. Analysis

Under Nebraska Law all real property, not expressly exempt therefrom, shall be subject to taxation.²⁹ The definition of real property with regard to real property taxation has six broad categories:

“Real Property shall mean

- (1) All land;
- (2) Buildings, improvements, and fixtures except trade fixtures;
- (3) All electrical generation, transmission, distribution, and street lighting structures or facilities owned by a political subdivision of the state;
- (4) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purpose, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;
- (5) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil and gas leases; and
- (6) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.”³⁰

The term cabin trailer is not defined in this section, but in the section of the Nebraska Statutes that cover vehicle registration a cabin trailer “means any trailer designed for living quarters and for being towed by a motor vehicle”³¹ Under these provisions of law, the

²⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2018)

³⁰ Neb. Rev. Stat. §77-103 (2020 Cum. Supp.)

³¹ Neb. Rev. Stat. § 60-314 (Reissue 2021)

Improvement meets the definition of a cabin trailer which may be considered real property subject to real property taxation.

The Taxpayer alleges that the Improvement is a trailer required to be registered for operation on the highways of this state and therefore exempt from assessment for property tax purposes regardless of the definition of real property cited above. Nebraska Law states that “[m]otor vehicles, trailers, and semitrailers required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.”³² The Taxpayer asserts this is where we should stop when reading the statutes regarding real property taxation, ignoring the previous statutory provisions. The Nebraska Supreme court has held that “Statutes relating to the same subject, although enacted at different times, are in pari materia and should be construed together. All statutes relating to the same subject are considered as parts of a homogenous system, and later statutes are considered as supplementary to preceding enactments. *Id.*”³³ Further “[t]he rules of statutory interpretation require an appellate court to give effect to the entire language of a statute, and to reconcile different provisions of the statutes so they are consistent, harmonious, and sensible.”³⁴

The statutes explicitly state that cabin trailers not registered for highway use are real property for purposes of real property taxation. The statutes further state that cabin trailers required to be registered for operation on the highways of this state shall be exempt from payment of property taxes. How can these two provisions of statute be read so that they are consistent, harmonious, and sensible?

Neb. Rev. Stat. §60-362 sets forth that a trailer is only required to be registered when it is towed or parked on the highways of this state. This statute further contains a rebuttable presumption that any trailer stored or kept in the state is being operated, parked, or stored on the highways of this state. If every trailer were required to be registered,

³² Neb. Rev. Stat. §77-202(4))(2020 Cum. Supp.)

³³ *Caniglia v. Caniglia*, 285 Neb. 930, 935, 830 N.W.2d 207, 212 (2013).citing *Mahnke v. State*, 276 Neb. 57, 751 N.W.2d 635 (2008).

³⁴ *ML Manager v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566 (2014).

whether or not parked or towed on the highways of this state, then the rebuttable presumption would not be necessary to give effect to that language in the statute not all trailers are required to be registered. It follows that a trailer is not required to be registered when it is not towed or parked on the highways of this state. This position is supported by the fact that a cabin trailer not registered for highway use can be considered a residence for purposes of a homestead exemption from real property tax.³⁵

To put this another way, Nebraska law requires vehicles and trailers that are used on public highways to be registered. Nebraska law also presumes that vehicles and trailers will be used on public roads and highways. However, if evidence is presented that a vehicle or trailer is *not* used on public roads or highways, then registration is *not* required for that vehicle or trailer. Then, if that vehicle or trailer meets the definition of a motor home or cabin trailer, that vehicle or trailer may be assessed as real property and subject to property tax.

The evidence before the Commission is that the Improvement was placed on the Taxpayer's private property and utilized as his primary residence for the entirety of tax year 2019. The Taxpayer further admits that he did not tow or park the Improvement on a highway when it was not registered. The Commission therefore finds that the Improvement was not towed or parked on a highway of the state during the relevant timeframe and therefore was not required to be registered. Because the improvement was not required to be registered for operation on the highways of this state, and was not in fact registered for operation on the highways of this state on the assessment date, it is not exempt from real property taxation.

The Taxpayer presented no evidence or argument to show that the Subject Property has a value for assessment purposes different than that determined by the County Board.

³⁵ See, Neb. Rev. Stat. 77-3502 (Reissue 2018)

VI. CONCLUSION

The Commission finds that there is not 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 there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Butler County Board of Equalization determining the value of the Subject Property for tax year 2019 is affirmed.
2. The assessed value of the Subject Property for tax year 2019 is:

Land	\$ 90
<u>Improvements</u>	<u>\$2,350</u>
Total	\$2,440

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Butler County Treasurer and the Butler 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 2019.

7. This Decision and Order is effective for purposes of appeal on December 21, 2022.³⁶

Signed and Sealed: December 21, 2022

SEAL



Steven A. Keetle, Commissioner

Robert W. Hotz, Commissioner

³⁶ 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.