

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Barbara L. Troia,

Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 19R 0402

**DECISION & ORDER REVERSING
THE DECISION OF THE DOUGLAS
COUNTY BOARD OF EQUALIZATION**

For the Appellant:

Anne E. Troia,
Anne E. Troia, PC, LLO

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. BACKGROUND

The Subject Property is a residential parcel located in Douglas County. The parcel is improved with a two story, 4,950 square foot home. The legal description and property record card for the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,349,200 for tax year 2019. Barbara L. Troia (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property was \$1,153,400 for tax year 2019.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 9, 2021, with Commissioner Hotz presiding. Exhibits 1 through 5 were admitted. Scott Barnes, an employee of the County Assessor, testified at the hearing.

¹ Exhibit 1.

III. STANDARD OF REVIEW

The Commission's review of a county board of equalization's decision is de novo.² A presumption exists that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its actions.³ The presumption disappears when there is competent evidence adduced on appeal to the contrary.⁴ Once the challenging party overcomes the presumption of validity by competent evidence, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all of the evidence presented.⁵ The burden of showing a valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board of equalization.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸ Clear and convincing evidence means that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved.⁹ An appealing party must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ A county board of equalization need not put on any evidence to support its valuation of the property at issue unless the appealing party establishes that the county board's valuation was unreasonable or arbitrary.¹¹

² 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." *Doe v. Board of Regents*, 283 Neb. 303, 317, 809 N.W.2d 263, 274 (2012) (quoting *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009)).

³ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644, 935 N.W.2d 764, 769 (2019).

⁴ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644, 935 N.W.2d 764, 769 (2019).

⁵ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 645, 935 N.W.2d 764, 769-70 (2019).

⁶ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 645, 935 N.W.2d 764, 770 (2019).

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018); see also *Appeal of Newman*, 167 Neb. 666, 672-73, 94 N.W.2d 47, 50-51 (1959).

⁸ *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 944, 911 N.W.2d 551, 559 (2018).

⁹ *In re Interest of Zachary D. & Alexander D.*, 289 Neb. 763, 768, 857 N.W.2d 323, 328 (2015).

¹⁰ *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565, 570, 563 N.W.2d 785, 788-89 (1997).

¹¹ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 647, 935 N.W.2d 764, 771 (2019).

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.¹² The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹³ The Commission may also 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.¹⁴ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁵

IV. APPLICABLE LAW

Under Nebraska law, all real property subject to taxation shall be assessed as of January 1 and, except for agricultural land and horticultural land, shall be valued at its actual value.¹⁶ Actual value means the market value of real property in the ordinary course of trade.¹⁷ It is the most probable price 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 willing seller.¹⁸ Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach, (2) income approach, and (3) cost approach.¹⁹ Actual value, market value, and fair market value mean exactly the same thing.²⁰

Taxes must be levied by valuation uniformly and proportionately upon all real property.²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² The constitutional requirement of uniformity extends to both rate and valuation.²³ The object of the uniformity clause is accomplished if all of

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018); *Upper Republican Nat. Res. Dist. v. Dundy Cty. Bd. of Equal.*, 300 Neb. 256, 273, 275, 912 N.W.2d 796, 807-09 (2018) ("The appeal is restricted to questions raised before the board.").

¹³ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018); see also *Langvardt v. Horton*, 254 Neb. 878, 893-94, 581 N.W.2d 60, 69-70 (1998) (evaluation in light of specialized knowledge and background is an expert evaluation and constitutes competent evidence).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Supp. 2020); see also Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁰ *In re Estate of Craven*, 281 Neb. 122, 127, 794 N.W.2d 406, 410 (2011) (citing *Xerox Corp. v. Karnes*, 217 Neb. 728, 350 N.W.2d 566 (1984)).

²¹ Neb. Const. art. VIII, § 1(1).

²² *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013).

²³ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.²⁴ 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.²⁵

V. FACTS AND ANALYSIS

Scott Barnes has been employed by the County Assessor since March 2012. His duties include appraising residential properties within Douglas County. He was not the designated appraiser for the Shadow Ridge area, where the Subject Property is located, in 2018. Barnes testified that the Subject Property was assessed using a mass appraisal model developed by a chief field deputy based upon sales for the market area where the Subject Property is located. Barnes did not know when the Subject Property was last inspected by an employee of the County Assessor.

The Taxpayer offered printouts of information published on the County Assessor's website for properties it considered comparable to the Subject Property, all dated 2021. Barnes acknowledged that the assessed values of some of the Taxpayer's proposed comparable properties declined, but he testified that he could not ascertain the reason the assessed values of different properties increased or decreased at different rates without the full property record files (PRFs) for the properties. The Commission is also unable to determine whether the Taxpayer's proposed comparable properties are comparable to the Subject Property without the PRFs.²⁶

Based on the information presented by the Taxpayer, Barnes testified that the Subject Property is a two story property, and all but one of the Taxpayer's proposed comparables were 1.5 story properties. According to Barnes, different styles of buildings can sell and be priced at different per-square-foot values, regardless of total square footage. The County Assessor uses only sales of properties of the same building style as comparables for determining value. One statistical model is used to determine the market value of two story homes, based only on sales of

²⁴ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

²⁵ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

²⁶ For this reason, the Order for Hearing and Notice of Hearing issued to the Taxpayer on March 5, 2021, contains the following:

PROPERTY RECORD FILES: Each party shall provide, as an exhibit, copies of the county's Property Record File for any parcel that party will assert is a comparable parcel.

NOTE: A screen shot or print out of a web page is not a Property Record File. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office before the hearing.

two story homes, and another statistical model is used to determine the market values of 1.5 story homes, based only on sales of 1.5 story homes.

According to the PRF for the Subject Property, the County Assessor assessed the 0.86 acre land component at \$117,700 and the residence at \$1,231,504, rounded to \$1,231,500.²⁷ Barnes testified that the land was valued as if vacant, based on sales of unimproved land in the area. The improvement value was determined using a cost approach. The base value per square foot was \$163.14.²⁸ An HVAC adjustment of \$8,564 was applied.²⁹ Various amenities including brick veneer, a sprinkler system, a finished basement, a 1,044 square foot attached garage, and a 1,072 square foot wood deck contributed to a total add-on value of \$349,239,³⁰ for a replacement cost new (RCN) of \$1,165,352.³¹ The County Assessor deducted depreciation of 7.9%, a total of \$92,083. The County Assessor applied a neighborhood adjustment of 1.1033, which resulted in a replacement cost new less depreciation (RCNLD) of \$1,184,138.³² The County Assessor also applied a quality adjustment of 1.04, which resulted in an indicated improvement value of \$1,231,504, which was rounded to \$1,231,500 and added to the assessed land value of \$117,700 to reach the assessed value of \$1,349,200.³³

The County Assessor determined that the Subject Property was of excellent quality and frame construction.³⁴ The Taxpayer disputed the condition of the property,³⁵ but not its construction quality or style. According to the Marshall & Swift Residential Cost Handbook (Marshall), a single family detached residence of excellent quality and frame construction has a typical building life of 60 years.³⁶ The Subject Property was built in 1997,³⁷ making its effective age 21 years as of January 1, 2019. According to Marshall, a residence with an effective age of

²⁷ Exhibit 2:3.

²⁸ Exhibit 2:8.

²⁹ Id.

³⁰ Id.

³¹ \$807,549 base value + \$8,564 HVAC adjustment + \$349,239 add-ons = \$1,165,352.

³² Exhibit 2:9.

³³ Id.

³⁴ Exhibit 2:4.

³⁵ “[A]lthough this sort of testimony is admissible evidence, it does not automatically lead to the conclusion that such evidence constitutes competent evidence contrary to the presumption. That determination involves . . . specifically whether the substance of the evidence presented by the taxpayer was competent” *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 948, 911 N.W.2d 551, 561 (2018).

³⁶ Marshall & Swift Residential Cost Handbook, 6/2018, page E7.

³⁷ Exhibit 2:4.

21 years and a typical building life of 60 years should receive 19% depreciation under the costing guidelines instead of the 7.9% applied by the County Assessor.³⁸

The Taxpayer protested the assessed value to the County Board, which employed a referee to evaluate the protest and make a recommendation.³⁹ A copy of the referee's summary is found at Exhibit 2:14. The referee recommended lowering the assessed value of the improvement to \$1,035,700, bringing the total value to \$1,153,400. The referee made the following comments explaining the recommendation:

Comments: Recommend change based on recent 1.5 story sales at this location: 2615 S 191 Cir \$980,000/4212 = \$233 08/2018 1138 S 185 Cir \$910,000/3902 = \$233 04/2019 Subject: 4950 @ \$233 = \$1,153,350 Rounded: \$1,153[,]400.

The County Board set the value of the Subject Property at the amount recommended by the referee, \$1,153,400. Barnes testified that the referee should not have used 1.5 story homes as sales comparisons for the two story Subject Property, for the same reasons he did not consider the Taxpayer's proposed comparable properties truly comparable to the Subject Property: two story homes have different building costs and sell at different prices than 1.5 story homes, and the County Assessor uses different statistical models to determine their market value.

We acknowledge that Barnes testified that his opinion of the value of the Subject Property was the same value set by the County Board, but the rest of the evidence in the record contradicts that opinion. Because the County Board relied on the referee's recommendation, which was based on sales prices for 1.5 story homes instead of two story homes, we find that the presumption in favor of the County Board's decision has been rebutted, and we further find that the County Board's decision was arbitrary or unreasonable. Because 1.5 story homes and two story homes throughout the county were assessed using different models and different comparable sales, the County Board's decision created dis-equalization between the Subject Property and other two story homes in the same market area.

The cost approach value produced by the County Assessor was the most persuasive evidence in this appeal. However, we substitute the 19% depreciation from Marshall & Swift for the 7.9% applied by the County Assessor, consistent with Barnes's testimony that the amount of

³⁸ Marshall & Swift Residential Cost Handbook, 6/2018, page E-17, compare with Exhibit 2:8.

³⁹ See Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

depreciation used for 2019 was derived from the Marshall & Swift costing guidelines. The RCN determined by the County Assessor was \$1,165,352. 19% of \$1,165,352 is \$221,417 depreciation, which produces an RCNLD of \$943,935. No evidence rebuts the County Assessor's application of the neighborhood adjustment of 1.1033, which yields \$1,041,443, or the quality adjustment of 1.04, which results in an indicated improvement value of \$1,083,101. No evidence rebuts the land value of \$117,700, which results in a total taxable value of \$1,200,801.

The Commission may consider and find a taxable value in excess of the highest taxable value for which notice was given by the County Assessor, the County Board of Equalization, or the Property Tax Administrator if notice of a higher taxable value and the intent to offer proof in its support is given by a party.⁴⁰

\$1,200,801 is higher than the value determined by the County Board, but lower than the taxable value for which notice was given by the County Assessor. Therefore, the Commission may find that \$1,200,801 is the taxable value of the Subject Property without any party providing further notice.

VI. CONCLUSIONS OF LAW

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 the reasons set forth above, the County Board's decision is vacated and reversed.

VII. ORDER

IT IS ORDERED:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is **\$1,200,801**.

⁴⁰ 442 Neb. Admin. Code, ch. 5 § 016.02A.

3. 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).
4. Any request for relief 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 September 14, 2021.⁴¹

Signed and Sealed: September 14, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴¹ 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.