

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bernard J. Morello,
Appellant,

v.

Douglas County Board of Equalization
Appellee

Case Nos. 09A-125

Order Reversing the Determination of the
Douglas County Board of Equalization

For the Appellant:
Bernard J. Morello,
Pro Se

For the Appellee:
Thomas Barrett,
Deputy Douglas County Attorney

Appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property consists of a 16 acre parcel in Douglas County, Nebraska. The parcel includes 5.5 acres improved with residential cabins that are not owned by the Taxpayer (improvements on leased land). The Property Record card and legal description¹ are found at Exhibit 49.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the subject property was \$125,570 for the land component and \$22,800 for the improvements, for a total of \$148,370.² Bernard J. Morello (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined that the assessed value was \$77,810, including \$55,010 for the land and \$22,800 for the improvements.³ The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits as ordered by the Commission.

¹ Exhibit 49:11.

² Exhibit 3:1.

³ Exhibit 3:1.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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."⁵

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.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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹⁰

⁴ See, Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.), *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).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹⁰ *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual 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.¹¹

"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."¹² The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing."¹³ 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.¹⁴ All real property in [Nebraska] subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

"Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value."¹⁷ Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes...."¹⁸ Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.¹⁹

Improvements on leased lands, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes on real property. When the request is filed by the owner of the leased lands, notice shall be given by the county assessor to the lessee at the address on the request.²⁰

B. Summary of the Evidence

1. Improvements

The Subject Property was improved with several residential cabins, none of which were owned by the Taxpayer.²¹ The land associated with these improvements, 5.5 acres,²² was subject to lease. Under Nebraska law, such improvements on leased private land are assessed to the owner of the leased land unless the lessor or the lessee has filed with the county assessor a form specifically stating that the improvements are property owned by the lessee.²³

Barry Couch,²⁴ an employee of the Assessor testified on behalf of the County Board. Couch testified that even though the Assessor and the County Board had assessed the improvement values to the Taxpayer, the various improvements should have been assessed to the owner(s) of the improvements, not to the Taxpayer, per the requirements of Neb. Rev. Stat. § 77-1376. The Commission finds that Couch's testimony on this issue is sufficient competent evidence to rebut the presumption in favor of the County Board's determination that the improvement value be assessed to the Taxpayer. The Commission also finds that the same testimony is clear and convincing evidence that the County Board's determination to assess the value of the improvements to the Taxpayer was arbitrary or unreasonable. We further find that Couch's testimony is competent evidence that the improvements on the Subject Property should not have been assessed to the Taxpayer.

²⁰ Neb. Rev. Stat. § 77-1376 (Reissue 2009).

²¹ See 12/4/09 Note at E49:8.

²² See 7/23/09 Note at E49:8.

²³ See Neb. Rev. Stat. § 77-1376 (Reissue 2009).

²⁴ Couch testified that he was the Chief Field Deputy for the Assessor, and that he had been a Certified General Appraiser for more than 20 years.

2. Land

The Taxpayer asserted that periodic flooding affected the use of the Subject Property, but he offered no quantifiable evidence of the effect of the flooding on the value of the Subject Property. The Assessor initially valued the land component of the Subject Property at \$125,570.²⁵ An Assessment Report was prepared by Kevin Corcoran, an employee of the Assessor, and signed by him on May 20, 2010.²⁶ In the Assessment Report, the Property Record Card indicates a contribution to value of the land component of \$70,910,²⁷ not \$125,570. There is no evidence received that would explain this difference.

After acknowledging that the value of the improvements should not be assessed to the Taxpayer, as discussed above, Couch testified to his opinion that the total value determined by the County Board, \$77,810, should be the value of the land component only. The total County Board determination of value was \$77,810, including \$55,010 for the land and \$22,800 for the improvements.²⁸ Couch did not explain why, once determining that the improvements should not be assessed to the Taxpayer, the value of the improvements should then be added to the value of the land as determined by the County Board.

The Commission finds that none of the evidence received is competent evidence to rebut the presumption in favor of the determination of the County Board, nor is it clear and convincing evidence that the determination by the County Board is arbitrary or unreasonable.

V. CONCLUSION

Regarding the improvements on the Subject Property, 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 determination to assess the value of the improvements to the Taxpayer was arbitrary or unreasonable.

²⁵ Exhibit 3:1.

²⁶ Exhibit 49:1.

²⁷ Exhibit 49:11. In the Land Valuation Summary, the assessed value listed for 5.5 acres associated with the improvements does not appear to be multiplied correctly. The Property Record Card shows 5.5 acres multiplied by \$20,000 per acre totaling \$39,400. Why the product is not listed as \$110,000 was not explained. In each of the three other calculations on this page the product of the two multipliers is correct.

²⁸ Exhibit 3:1.

Regarding the contribution to value of the land component of the Subject Property, the Commission finds 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 that there is not clear and convincing evidence that the County Board's determination was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the Board of Equalization is Vacated and Reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2009 is Vacated and Reversed.
2. The Assessed value of the Subject property for tax year 2009 is:

Land	\$55,010
Improvement	<u>\$ 0</u>
Total	\$55,010

3. This 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 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Order shall only be applicable to tax year 2009.

7. This Order is effective for purposes of appeal on November 14, 2012.

Signed and Sealed: November 14, 2012.

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.