

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joan M. Goodrich,
Appellant,

v.

Greeley County Board of Equalization,
Appellee, and

Paul D. and Ruth R. Nielsen,
Appellee.

Case No: 17R 0010

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,

Paul D. and Ruth R. Nielsen,
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 1,440 square foot home. The legal description and property record card for the Subject Property are found at Exhibit 9.

II. PROCEDURAL HISTORY

Joan M. Goodrich, Greeley County Assessor (the County Assessor), determined that the assessed value of the Subject Property was \$88,560 for tax year 2017. Paul D. and Ruth R. Nielsen (the Taxpayer) protested this assessment to the Greeley County Board of Equalization (the County Board) and requested an assessed valuation of \$80,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$85,000.¹

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, 3 through 18, 27 through 30, and 32 through 38 were admitted by stipulation or in the course of the hearing. Exhibits 2 and 19 were admitted with limitations as described in the record. Exhibits 20 through 26 and 31 were marked but not offered or received.

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

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).

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 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

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 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* at 180, 829.

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

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

Four witnesses testified at the hearing: Joan M. Goodrich, Michael A. Goldfish, Paul D. Nielsen, and Ruth R. Nielsen. 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. Mr. Goldfish is a member of the County Board and he has served in that capacity for approximately twenty years, including all times material to this appeal. He is not certified or licensed as an assessor or appraiser. Mr. and Mrs. Nielsen are the owners of the Subject Property.

The County Assessor testified that she valued the Subject Property using the sales comparison approach, which operates by taking recently sold properties and comparing them to other properties in the same taxing jurisdiction. This work is performed using a Computer Assisted Mass Appraisal System (CAMA System), which takes into consideration characteristics of the property including quality and condition, plumbing fixtures, heating and cooling, type of structure, basement, and garage. The County Assessor testified that she had no comparable properties to the Subject Property. When the County Assessor values a property without comparable properties, she makes use of Marshall & Swift costing using the CAMA System. However, she adjusts the amount of depreciation applied to the home based on what she observes from sales in the market, because a newly built home with identical characteristics would likely sell for less than the replacement cost new in the Greeley County market. The County Assessor performed an external “drive-by” inspection of the Subject Property around the time of the protest, but she 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

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

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

the CAMA System, the County Assessor determined the value of the Subject Property to be \$88,560: \$85,805 for the house, \$2,625 for the land, and \$130 for an outbuilding.¹⁶

In support of this valuation, the County Assessor presented a list of recent residential sales from Wolbach, ranging in total parcel sale price from \$5,000 to \$79,000.¹⁷ 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 ninety-two to one hundred percent of actual value.¹⁸ This 6% increase applied only to the residences and garages, not to land or outbuildings. At the protest hearing before the County Board, the County Assessor provided property record cards (PRCs) for several properties to demonstrate that residence values increased by a blanket 6% across Wolbach. The Taxpayer offered the same PRCs at the hearing before the Commission.¹⁹ Four of the PRCs relate to properties in Wolbach, and all four show the 6% increase.²⁰ 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, the valuations for Wolbach met the statutory requirements and that the quality of assessment met generally accepted mass appraisal practices.²¹ No economic depreciation was applied to Wolbach for tax year 2017, nor did the County Board request that the County Assessor apply such depreciation.

Mr. Goldfish testified that the County Board's reduction in the valuation of the Subject Property was on the basis of economic depreciation. The County Board considered the sale of another home (the Perry House) in reaching its valuation. Although the County Board did not provide a PRC for the Perry House as evidence in this proceeding, Mr. Goldfish testified that the house sold approximately three years prior to 2017 for \$75,000. He also testified that this was the

¹⁶ Ex 9:1.

¹⁷ Ex 27.

¹⁸ See Neb. Rev. Stat. §77-5023 (Reissue 2018). The 6% increase in valuation for the residence represents the entire change in assessed value from tax year 2016 to tax year 2017 (less an \$80 reduction in the assessed value of an outbuilding).

¹⁹ Exs 4 through 8. The County Assessor submitted the same PRCs to be used as exhibits, but these were ultimately not offered because they were duplicative of 4 through 8.

²⁰ *Id.*

²¹ Ex 28:6.

highest price ever paid for a residential sale in Wolbach prior to 2017. Reasoning that the Subject Property was unlikely to sell for more than the Perry House, the County Board determined to lower the valuation. Mr. Goldfish proposed a reduction of 10% for economic depreciation, and negotiated with the other commissioners in reaching the final valuation of \$85,000, a reduction of approximately 4%.

Mr. and Mrs. Nielsen testified about potentially negative conditions such as a poorly maintained “nuisance house”²² near the Subject Property and lack of nearby amenities, such as a grocery store, school, or other government services, but they did not provide any evidence to quantify the impact of those conditions on the market value of the Subject Property.

As discussed above, we begin with the presumption that the County Board faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. If that presumption is rebutted, the reasonableness of the valuation becomes one of fact based upon all the evidence presented, with the appealing party having the burden of showing the County Board’s determination to be unreasonable or arbitrary by clear and convincing evidence. A decision is “arbitrary” when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.²³ It is “unreasonable” only if the evidence presented leaves no room for differences of opinion among reasonable minds.²⁴

We find that the County Board’s determination was arbitrary. One board member, who is not qualified as an assessor or appraiser, determined that a 10% reduction should be applied to the Subject Property, based on a single sale several years prior to the tax year in question. In the course of deliberation, he negotiated with his fellow board members until they compromised on a 4% reduction. Neither the Taxpayer nor the County Board presented any empirically derived data to support either a 10% or 4% reduction for economic depreciation, nor is there any evidence that such a reduction has been uniformly applied throughout Wolbach or elsewhere in the county. Although we are not indifferent to the lack of amenities and government services described by Mr. and Mrs. Nielsen in their testimony, the statistical data compiled by the County

²² See Ex 37.

²³ *Phelps Cty. Bd. of Equal v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

²⁴ *Pitman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 603 N.W.2d 447 (1999).

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. 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.

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.

V. 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	\$ 2,625
<u>Improvements</u>	<u>\$85,935</u>
Total	\$88,560

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**.²⁵

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

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner

²⁵ 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.