

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joan M. Goodrich,
Appellant,

v.

Greeley County Board of Equalization,
Appellee, and

Robert D. Nealon, Jr.,
Appellee.

Case No: 17R 0011

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,

Robert D. Nealon, Jr.,
Pro se

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 936 square foot home and a 720 square foot detached garage. The legal description and property record card for the Subject Property are found at Exhibit 5, pages 2-3, and Exhibit 17.

II. PROCEDURAL HISTORY

The Greeley County Assessor, Joan M. Goodrich (the County Assessor), determined that the assessed value of the Subject Property was \$35,090 for tax year 2017. Robert D. Nealon, Jr., (the Taxpayer) protested this assessment to the Greeley County Board of Equalization (the County

Board) and requested an assessed valuation of \$25,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$30,000.¹

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 20, 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 and 3 through 30 were admitted by stipulation or in the course of the hearing. Exhibit 2 was 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 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

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).

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).

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 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

Three witnesses testified at the hearing: Joan M. Goodrich, Lila Studley, and Robert Nealon. Ms. Goodrich is the Greeley County Assessor, and she has served in that capacity since 2012.

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

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

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

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

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. Ms. Studley is a resident of Greeley County and is familiar with the Subject Property and with another property, the Friedrichsen property, which the County Board regarded as a comparable property.¹⁶ Ms. Studley does not have any training or experience in the field of assessment or appraisal of real property.

Ms. Goodrich testified that she valued the Subject Property using a sales comparison approach, which operates by taking properties sold during a two-year window prior to the assessment date and comparing them to other properties within the same taxing jurisdiction using a Computer Assisted Mass Appraisal System (the CAMA System). Characteristics of properties are entered into the CAMA System, which indicates a value based on those characteristics. To calculate the specific valuation of the Subject Property, the County Assessor put information about the Subject Property into the CAMA System, after which the characteristics of the Subject Property were compared to other properties within the county. Following the Taxpayer's protest, the County Assessor performed an external "drive-by" inspection of the Subject Property, and 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 the CAMA System, the County Assessor determined the value of the Subject Property to be \$35,090 for tax year 2017: \$33,410 for the house and garage, and \$1,680 for the land.

In support of this valuation, the County Assessor presented the property record cards of two similar properties from Wolbach, ranging in assessed value from \$22,505 to \$34,495.¹⁷ She also presented a list of recent residential sales from Wolbach ranging in total parcel sale price from \$5,000 to \$79,000.¹⁸ The six sales that occurred between October 1, 2014, and September 30, 2016, which included the sale of the Friedrichsen property, 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

¹⁶ The Property Record Card (PRC) for the Friedrichsen property is located at Ex 5:4-5.

¹⁷ Exs 18-19.

¹⁸ Ex 20.

of actual value.¹⁹ 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 assessment practices met generally accepted mass appraisal practices.²⁰

The County Assessor testified that the County Board made its decision to reduce the valuation of the Subject Property based on what the board members believed the market price of the Subject Property might be. She further testified that, in her opinion, the adjustment was not based on the facts and circumstances as presented to the County Board, failed to create a uniform assessment for Greeley County, and was arbitrary.

Ms. Studley testified that she was familiar with the Subject Property as well as the nearby Friedrichsen property. She testified that the Friedrichsen property was a block away from the Subject Property, with similar square footage, central air, and no garage, and that the Friedrichsen property had been purchased for \$18,000. At closing argument, the County Board asserted that, if this sale price was added to the value of the Subject Property's garage, "You're going to come pretty close to the value that the County Board set," *i.e.*, for the Subject Property.

We do not find this persuasive. If the County Board's intention was to value the Subject Property at the sale price of the Friedrichsen property plus the value of the Subject Property's garage, the calculation would produce a total of either \$31,110 (valuing the garage before the 6% increase) or \$31,897 (valuing the garage after the 6% increase).²¹ The fact that the County Board set the value of the Subject Property at \$30,000 indicates that it was making some further adjustments to the value of the land, or the house, or the garage, which are not reflected in the record or explained on the protest form. In any event, neither an appropriate valuation determination or equalization analysis is achieved simply by adding the (approximate) value of one parcel's garage to the sale price of another parcel.

¹⁹ See Neb. Rev. Stat. §77-5023 (Reissue 2018). This 6% increase affected only residences and garages, not land or outbuildings, and was applied to the replacement cost new less depreciation (RCNLD) indicated by the CAMA System. Due to a past decision of the County Board reducing the valuation of the Subject Property to less than the RCNLD (see Ex 5:2), the net increase on the Subject Property was approximately 10% for tax year 2017.

²⁰ Ex 21:3-6.

²¹ See Ex 5:3.

The Friedrichsen property sold on December 18, 2014, for \$18,000,²² and the house is similar to the house of the Subject Property. Both were deemed by the County Assessor to have an effective age of 52 years and both were assessed with 79% physical depreciation. Both improvements were deemed by the County Assessor to be of fair quality and in average condition. The above ground area of the Subject Property is only four square feet smaller.²³ Although the Friedrichsen property has a slightly higher base cost of construction on a per-square-foot basis, this is counterbalanced by the additional costs associated with the Subject Property's basement, which adds \$15.53 per square foot to the adjusted cost of the Subject Property.²⁴ The Subject Property also has a wood deck and a significantly larger raised slab porch with a roof, which causes the total undepreciated cost of its miscellaneous improvements to exceed that of the Friedrichsen property by \$1,475.²⁵ Applying 79% depreciation to the total replacement cost new (the RCN) of the Subject Property results in \$18,410,²⁶ and applying the same depreciation to the total RCN of the Friedrichsen property results in \$15,785.²⁷ The majority of the difference in cost between the houses alone comes from the Subject Property's basement and deck.²⁸

Much of the difference in total parcel value relates to the Subject Property's garage. The Subject Property's detached 720 square foot garage, built in 2012, has a replacement cost of \$23.34 per square foot (\$16,805 total), but is depreciated at 22%, with a value of \$13,110 after depreciation.²⁹ When this amount is added to the depreciated total RCN, the result is \$31,520 for the Subject Property, as compared with the unchanged \$15,785 for the Friedrichsen property.³⁰ As the County Assessor noted in her testimony, the 6% across-the-board increase to residential values in Wolbach applied to houses and garages, but not to land. After this increase, the adjusted replacement cost new less depreciation (the RCNLD) of the Subject Property is \$33,410 and the adjusted RCNLD of the Friedrichsen property is \$16,730.³¹

²² Ex 20:1.

²³ Compare Ex 5:3 with Ex 5:5.

²⁴ Ex 5:3.

²⁵ *Id.* We note that results calculated by the CAMA System are rounded to the nearest multiple of 5; rounding small amounts is common in assessment practices.

²⁶ Total RCN (\$87,670) – 79% Depr (\$69,260) = \$18,410; see Ex 5:3.

²⁷ Ex 5:5.

²⁸ Compare Ex 5:3 with Ex 5:5.

²⁹ Ex 5:3.

³⁰ Ex 5:3, 5:5. This is the replacement cost new less depreciation, or RCNLD.

³¹ *Id.*

The remainder of the difference between the properties relates to the value of the land. The Subject Property has a 10,500 square foot lot, and the Friedrichsen property has only a 7,000 square foot lot.³² These lots are valued at the same rate of \$0.16 per square foot, but the difference in lot size results in a total land value of \$1,120 for the Friedrichsen property as opposed to \$1,680 for the Subject Property. Accordingly, the differences in value between the Subject Property and the Friedrichsen property are related to quantifiable differences in the characteristics of the two parcels. Even setting aside the detached garage, the Subject Property has a 792 square foot basement, a superior deck, and sits on a 50% larger lot. Because of these differences in the characteristics of the two properties, equalization between them would require careful analysis to account for the differences.

The record contains no evidence of the basis for the County Board's determination except the County Assessor's statement that the change reflected the board members' belief about the market value of the Subject Property and the possible inference that the County Board intended to equalize the properties by adding the value of the Subject Property's garage to the Friedrichsen property's 2014 sale price. 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.

V. 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.

³² Compare Ex 5:2 with Ex 5:4.

VI. 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	\$ 1,680
<u>Improvements</u>	<u>\$33,410</u>
Total	\$35,090

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 8, 2019.³³

Signed and Sealed: March 8, 2019

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner

³³ 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.