

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wedgewood Homeowners Assn. Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0603

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is classified as a residential parcel improved with a 1,708 square foot clubhouse and swimming pool, with a legal description of: Wedgewood Town Homes Add Lot 33 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$168,800 for tax year 2017.
3. Wedgewood Homeowners Assn. Inc. (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$1,600 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$168,800 for tax year 2017.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 13, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Donald D. Johnson was present at the hearing for the Taxpayer.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

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

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).

11. When considering an appeal 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer alleges that the Subject Property is misclassified as a residential property and is therefore overvalued.
17. Residential and commercial real property in Nebraska are both to be valued at 100% of actual or fair market value.⁹
18. The County Board presented the Property Record File (PRF) of the Subject Property, which identified the account type as residential, the property type as townhouse, and the built as type as clubhouse. Additionally, the cost detail of building contained in the PRF indicates that the property is being valued as a clubhouse.
19. Clubhouse is a type of construction found in the *Marshall Valuation Service Manual*, which contains the information necessary to determine the replacement cost of a clubhouse and its amenities.¹⁰ The cost detail contained in the PRF utilizes values consistent with the values set forth in the *Marshall Valuation Service Manual*.

³ *Brenner* at 283, 811.

⁴ *Id.*

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 Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See Neb. Rev. Stat. § 77-201 (Reissue 2018).

¹⁰ See for example, *Marshall Valuation Service*, Section 11 Page 30, November 2018.

20. The Taxpayer did not offer any information which demonstrates that the value of the Subject Property would be different if classified as a commercial property rather than classified as a residential property.
21. The Taxpayer alleges that the value of the Subject Property should be reduced or exempted from taxation in whole or in part because it is owned by the Taxpayer, which is a nonprofit corporation.
22. The present appeal concerns a determination of the County Board regarding the value of the Subject Property, not its exemption status. Furthermore, the Taxpayer did not apply for tax exempt status for the Subject Property for the 2017 tax year. The Commission does not have jurisdiction over the issue of the exemption status of the Subject Property in the present appeal.
23. The Subject Property is owned by the Taxpayer, the Wedgewood Homeowners Association, and is a parcel of land containing a clubhouse and in ground swimming pool. The owner of each lot covered by the Wedgewood Homeowners Association is a member of the Taxpayer and has voting rights and the right to use the Subject Property as set forth in the applicable articles.
24. The Taxpayer alleges that the value of the Subject Property should be reduced due to restrictions on the sale or use of the Subject Property placed upon it by the Articles of the Wedgewood Homeowners Association. The Taxpayer's main contention is that the Articles do not allow the Subject Property to be sold and therefore it would have no actual value. To put this argument in another way, the Taxpayer is arguing that because the Taxpayer unilaterally restricted the Taxpayer from selling the Subject Property the value of the Subject Property should be reduced.
25. Under Nebraska Law, real property "means all land, buildings, ... improvements, ... and all privileges pertaining to real property."¹¹ Privileges related to real property is defined as "the right to sell, lease, use, give away, or enter, and *the right to refuse to do any of these*. All rights may or may not be vested in one owner or interest holder."¹²
26. The Nebraska Court of Appeals has held that the actual value of real property for tax purposes shall be the value which a willing buyer would be willing to pay for the fee simple interest, or all of the rights and privileges pertaining to the real property.¹³
27. Finally the Taxpayer argues that the increase in the valuation of the Subject Property from the prior year is unreasonable or arbitrary.
28. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁴ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁵

¹¹ Title 350 Neb. Admin. Code, ch. 10 § 002.18 (10/14)

¹² Title 350 Neb. Admin. Code, ch. 10 § 002.18G (10/14) (emphasis added)

¹³ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁵ See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

29. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
30. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 26,800
<u>Improvements</u>	<u>\$142,000</u>
Total	\$168,800

3. This Decision and Order, if no further action is taken, 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, 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 on March 11, 2020.

Signed and Sealed: March 11, 2020

Steven A. Keetle, Commissioner