

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

Inland Insurance Company,
Appellant,

v.

Lancaster County Board of
Equalization,
Appellee.

Case No: 20C 0140

Decision and Order Affirming the
Decision of the Lancaster County
Board of Equalization

For the Appellant:

Shannon Doering,
Attorney at Law

For the Appellee:

Daniel J. Zieg,
Deputy Lancaster County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property was a commercial parcel located at 610 S. 12th Street, in the City of Lincoln, Lancaster County, Nebraska. The parcel was improved with a commercial building. The legal description of the Subject Property is found at Exhibit 1.

II. BACKGROUND AND PROCEDURAL HISTORY

The Lancaster County Assessor determined the assessed value of the Subject Property was \$793,800 as of the effective date of January 1, 2020, for tax year 2020.¹ On May 30 and May 31, 2020, the building was destroyed by a fire caused by an arsonist.² On June 29, 2020, and before July 15, 2020, Inland Insurance Company (the Taxpayer) properly filed a Form 425, Report of Destroyed Real

¹ All real property in Nebraska subject to taxation shall be assessed as of January 1. Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² At the hearing, the parties advised the Commission that the fire was set by a vandal. The arson occurred in the context of a riot in Lincoln, Nebraska.

Property (Report).³ The Lancaster County Board of Equalization (the County Board) considered the Report, and on August 6, 2020, made the assessment \$793,800.⁴ The County Board gave notice of the assessment to the Taxpayer on August 7, 2020.⁵ On August 10, the Taxpayer protested this assessment to the County Board, requesting an assessed valuation of \$170,400.⁶ On August 18, 2020, the County Board denied the Taxpayer's protest and sent the Taxpayer notice of the denial on August 19, 2020.⁷

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 12, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report,⁸ as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits and to certain facts. The parties also stipulated that if the Commission finds the Subject Property is destroyed real property, as defined by Neb. Rev. Stat. § 77-1307, the parties agree that the taxable value of the land component of the parcel would be \$170,400 and the improvement would have a taxable value of \$0.⁹

The primary issue remaining in dispute is the meaning of the word "calamity" in Neb. Rev. Stat. § 77-1307(2)(a), and the application of that meaning to the

³ Exhibit 1. "If real property becomes destroyed real property during the current assessment year, the property owner shall file a report of the destroyed real property with the county assessor and county clerk of the county in which the property is located on or before July 15 of the current assessment year." Neb. Rev. Stat. § 77-1308(1) (2019 Supp.).

⁴ Exhibit 1. "The county board of equalization shall consider any report of destroyed real property received pursuant to this section, and the assessment of such property shall be made by the county board of equalization in accordance with section 77-1309." Neb. Rev. Stat. § 77-1308(1) (2019 Supp.).

⁵ Exhibit 1. "The county board of equalization shall give notice of the assessed value of the destroyed real property to the record owner or agent at his or her last-known address." Neb. Rev. Stat. § 77-1309(3) (2019 Supp.).

⁶ Exhibit 3:6. "Protests of the assessed value proposed for destroyed real property pursuant to this section shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section." Neb. Rev. Stat. § 77-1309(3) (2019 Supp.).

⁷ Exhibit 2. The denial by the County Board referred to the action as the denial of an "appeal." We construe the action as a denial of the Taxpayer's protest. "The county board of equalization shall issue its decision on the protest within thirty days after the filing of the protest. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision." Neb. Rev. Stat. § 77-1309(3) (2019 Supp.).

⁸ See, Case File.

⁹ *Id.*

resolution of the Taxpayer's appeal. Prior to the hearing, the County Board also filed a Notice of Intent, challenging the Constitutionality of the statutory scheme involving destroyed real property.¹⁰

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.¹¹ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.¹²

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.¹³

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.¹⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁵

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.¹⁶ The County

¹⁰ The statutes being challenged include Neb. Rev. Stat. §§ 77-1307 to 77-1309 (2022 Cum. Supp.).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

¹² *Brenner* at 283, 811 (Citations omitted).

¹³ *Id.*

¹⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁶ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the County Board's valuation was unreasonable or arbitrary.¹⁷

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.¹⁸ 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.¹⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.²⁰

IV. DESTROYED REAL PROPERTY

The controlling statutes in this appeal are Neb. Rev. Stat. §§ 77-1307 to 77-1309. The statutory language at issue in Section 77-1307 includes the following:

- (1) The Legislature finds and declares that fires, earthquakes, floods, and tornadoes occur with enough frequency in this state that provision should be made to grant property tax relief to owners of real property adversely affected by such events.
- (2) For purposes of sections 77-1307 to 77-1309:
 - (a) Calamity means a disastrous event, including, but not limited to, a fire, an earthquake, a flood, a tornado, or other natural event which significantly affects the assessed value of real property;
 - (b) Destroyed real property means real property that suffers significant property damage as a result of a calamity occurring on or after January 1, 2019, and before July 1 of the current assessment year. Destroyed real property does not include property suffering significant property damage that is caused by the owner of the property; and
 - (c) Significant property damage means:
 - (i) Damage to an improvement exceeding twenty percent of the improvement's assessed value in the current tax year as determined by the county assessor;

¹⁷ *Bottof v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁸ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

- (ii) Damage to land exceeding twenty percent of a parcel's assessed land value in the current tax year as determined by the county assessor; or
- (iii) Damage exceeding twenty percent of the property's assessed value in the current tax year as determined by the county assessor if (A) such property is located in an area that has been declared a disaster area by the Governor and (B) a housing inspector or health inspector has determined that the property is uninhabitable or unlivable.

V. ANALYSIS

The Taxpayer asserts that for purposes of tax year 2020 the Subject Property qualifies as “destroyed real property,” as defined by Neb. Rev. Stat. § 77-1307(2)(b), and should therefore be assessed based upon the value of the property after a fire destroyed the improvements. The Taxpayer argues the destruction caused by the fire started on May 30, 2022, was a “calamity,” as defined by Neb. Rev. Stat. § 77-1307(2)(a), and resulted in “significant property damage,” as defined by Neb. Rev. Stat. § 77-1307(2)(c). The County Board concluded both in consideration of the Taxpayer’s Report of Destroyed Real Property and at the Taxpayer’s Protest hearing that the Subject Property did not qualify for any relief as destroyed real property for tax year 2020. The parties have stipulated that the Subject Property suffered significant property damage. The unresolved dispute is whether the destruction of the fire meets the statutory definition of “calamity.”

In reaching our decision, it will be necessary for us to follow several rules of statutory construction. First, in determining whether the fire that was started May 30, 2022, was a “calamity” we will not rely upon a common definition or a dictionary definition of the meaning of the word since the statute specifically defines the word for its limited purposes: as defined within this specific statutory scheme, “[c]alamity means a disastrous event, including, but not limited to, a fire, an earthquake, a flood, a tornado, or other natural event which significantly affects the assessed value of real property[.]”²¹

The County Board argues the plain meaning of the statutory language does not allow an interpretation that a man-made fire (one, as in this case, that was directly

²¹ Neb. Rev. Stat. § 77-1309(3) (2019 Supp.).

caused by an arsonist) falls under the statutory definition of calamity. The Taxpayer argues the statutory definition of calamity includes some man-made disastrous events, like man-made fires and man-made earthquakes.²² Particularly, the Taxpayer argues that destruction as a result of a man-made fire, like arson, should not be excluded as a “calamity.” Essentially, the Taxpayer argues that the statute includes four expressly stated natural events (fire, earthquake, flood, and tornado), two expressly stated man-made events (same mention of fire and earthquake), and other natural events (which, in Nebraska, might also include wind, hail, rain, lightning, or snow).

As noted above, rules of statutory construction will guide our analysis. “In construing a statute, a court must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose.”²³

When interpreting a statute, the starting point and focus of the inquiry is the meaning of the statutory language, understood in context. Our analysis begins with the text, because statutory language is to be given its plain and ordinary meaning, and the appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. Neither is it within the province of the Courts to read meaning into a statute that is not there or to read anything direct and plain out of a statute. When legal terms of art are used in statutes, they are to be construed and understood according to their term of art meaning.²⁴

“When interpreting a statute, effect must be given, if possible, to all the several parts of a statute; no sentence, clause, or word should be rejected as meaningless or superfluous if it can be avoided.”²⁵

In addition to the definitions found in Neb. Rev. Stat. § 77-1307(2), listed and discussed above, the Legislature also included specific findings regarding the statutory scheme, in Neb. Rev. Stat. § 77-1307(1), that “[t]he Legislature finds and

²² Counsel for the Taxpayer argued there could be such a thing as a man-made earthquake.

²³ *Durand v. Western Surety Co.*, 245 Neb. 649, 651, 514 N.W.2d 840, 842 (1994).

²⁴ *Seivert v. Alli*, 309 Neb. 246, 255-56, 959 N.W.2d 777, 786-87 (2021).

²⁵ *McEwen v. Neb. State College Sys.*, 303 Neb. 552, 570, 931 N.W.2d 120, 133 (2019).

declares that fires, earthquakes, floods, and tornadoes occur with enough frequency in this state that provision should be made to grant property tax relief to owners of real property adversely affected by such events.” Therefore, the express purpose of the statutory scheme is “to provide property tax relief to owners of real property adversely affected by such events” as “fires, earthquakes, floods, and tornadoes” that “occur with [certain] frequency in this state.” In order to conclude that man-made fires should be included within the meaning of “calamity” in subsection (2)(a), as the Taxpayer asserts, we must conclude that the text of the statute contemplates man-made fires in the same context as all “disastrous events” that are “natural events.”

The County Board argues that the legislative record clearly limited the scope of the bill to natural events. However, nearly all of the legislative record, including the Introducer’s Statement of Intent, the testimony given at the Revenue Committee Hearing for the bill, and the legislative floor debate, pertained to drafts of the proposed legislation that were different from the amendment language that was finally adopted.²⁶ We will not rely upon this legislative history for two reasons: first, the statute is unambiguous and, second, because this legislative history relates to earlier versions of the legislation that included substantially different legislative language. We find, as more fully explained below, that the statute is unambiguous, and therefore, our inquiry begins and ends with the actual language of the statute.

The Taxpayer’s construction would require the Commission to read into the statute words that are not present in the text of the statute. It is clear that natural

²⁶ See, Introducer’s Statement of Intent, LB 512, which says the bill “[p]rovides relief to property taxpayers for damage or destruction due to a natural disaster;” Introduced bill, LB 512, referred to as the Green Copy, providing relief in the event of a “major calamity,” as defined by the bill at page 19, lines 6-11; Committee Hearing testimony January 31, 2019, of the Tax Commissioner, Tony Fulton, stating that a portion of the bill “provides tax relief to those whose property is damaged or destroyed due to a natural disaster...,” page 64; Revenue Committee Statement, LB 512, which described the Green Copy language as providing “relief to property taxpayers for damage or destruction due to a natural disaster ...”; Amendment AM1217, offered by Senator Steve Erdman, defining “destroyed real property that is destroyed by fire or other natural disaster...,” page 11, lines 28-30. The finally adopted amendment was AM1755, amending AM1217, which first included the legislative findings later codified at Section 1307(1), and the remainder of Sections 1307-1309, including all of the definitions at issue in this appeal.

events are included. It is not at all clear that man-made events should be included within the meaning of the statutory definition of calamity.

The text of the statute expressly includes fire, earthquake, flood, and tornado. The comma after the word tornado signifies that in addition to these four events, other events may also be included as calamity where it states, “or other natural events.” This prepositional phrase, “or other natural events,” also relates back to the four events named just previous. We pay particular attention to the use of the word “other” in this context.

We reject a construction that “other” here refers only to natural events, while fire, earthquake, flood, and tornado refer either to natural or man-made events. Such a construction would “read meaning into a statute that is not there.”²⁷

We also reject a construction that would read the text as though there is no comma after the word tornado, which would require us to interpret the text as though it said, “a tornado or other natural event,” meaning that “or other natural event” refers only to tornado and not to fire, earthquake, or flood, which could then each be natural or man-made events. Again, this construction would require us to “read meaning into the statute that is not there.”²⁸ In fact, the statutory scheme makes reference only to “natural” events; no reference is expressly made to any “man-made” events.

The interpretation of the statute also requires us to determine what effect the limiting language “but not limited to” has on the meaning of calamity. If we read this prepositional phrase as placing no limit at all to whether the event was natural or man-made, then the definition of calamity is reduced to “calamity means any disastrous event which significantly affects the assessed value of real property.” Such a construction would treat many specific words within the definition of calamity as being superfluous. “When interpreting a statute, effect must be given, if possible, to all the several parts of a statute; no sentence, clause, or word should be

²⁷ *Seivert v. Alli*, 309 Neb. at 255-56, 959 N.W.2d at 787 (2021).

²⁸ *Id.*

rejected as meaningless or superfluous if it can be avoided.”²⁹ Such a construction would also read meaning that is direct and plain out of the statute.³⁰ A sensible reading of this limiting language is that it makes room for natural disasters not expressly named in the statute that occur with frequency in this state other than fire, earthquake, flood, and tornado. As mentioned above, this might reasonably include wind, hail, rain, lightning, or snow.

Therefore, we find that the text of the statutory definition of calamity is plain, direct, and unambiguous, and we conclude it does not include within its scope destruction caused by a fire started by an arsonist.

We agree it is unfortunate for the Taxpayer that the destruction to the Subject Property caused by the fire started by an arsonist is not contemplated by this statutory scheme, and no property tax relief may be granted; whereas similar destruction, caused instead by a fire resulting from a lightning strike to the same property, could have resulted in some relief to the Taxpayer. However, the Commission will not weigh in on policy matters that are solely in the hands of the Legislature.

VI. CONCLUSION

We conclude that the definition of calamity in Neb. Rev. Stat. § 77-1307(2)(a) does not include within its scope the destruction to the Subject Property that was caused by the fire started by an arsonist. Therefore, the Commission finds that 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 decision was arbitrary or unreasonable.

The Commission will make no determination regarding the constitutionality of the underlying statutory scheme.

²⁹ *McEwen v. Neb. State College Sys.*, 303 Neb. at 570, 931 N.W.2d at 133. “These words cannot be meaningless, else they would not have been used.” *United States v. Butler*, 297 U.S. 1, 65 (1936).

³⁰ *Id.*

For the reasons set forth above, the appeal of the Taxpayer should be denied, and the decision of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is \$793,800.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2020.
7. This Decision and Order is effective for purposes of appeal on April 5, 2023.³¹

Signed and Sealed: April 5, 2023

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³¹ 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.