

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bernard J. Morello,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos. 10A-450

Order Affirming 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).¹ The Property Record card and legal description² are found at Exhibit 49.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the subject property was \$43,440.³ 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 \$43,440.⁴ 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 For purposes of this Order, since the improvements were not assessed to the owner of the land, all references to the Subject Property are to the contribution to value of the land component of the parcel only.

² Exhibit 49:6.

³ Exhibit 3:1. The value of the improvements was not assessed to the Taxpayer.

⁴ Exhibit 3:1. The taxable value, as determined by the County Board, did not include the value of the improvements.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁵ 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."⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ 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.¹¹

⁵ 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

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

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *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.¹²

"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."¹³ The Courts have held that "[a]ctual value, market value, and fair market value mean exactly the same thing."¹⁴ 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.¹⁵ All real property in [Nebraska] subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

"Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value."¹⁸ Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes....¹⁹ 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.²⁰

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

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201 (2) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-1359 (1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-1359 (2) (Reissue 2009).

B. Summary of the Evidence

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 \$43,440.²¹ An Assessment Report was prepared by Michael Lunkwitz, an employee of the Assessor, and signed by him on June 1, 2011.²² In the Assessment Report, the Property Record Card indicates a contribution to value of the land component of \$59,010,²³ not \$43,440. However, there is no evidence received that would explain this difference.

V. CONCLUSION

The Commission finds there is no competent evidence to rebut the presumption in favor of the determination of the County Board, nor is there clear and convincing evidence that the determination by the County Board is arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the Board of Equalization is Affirmed.

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 2010 is Affirmed.
2. The Assessed value of the Subject property for tax year 2010 is \$43,440.
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.

²¹ Exhibit 3:1.

²² Exhibit 49:1.

²³ Exhibit 49:6. In the Land Valuation Summary, only one of the four calculations appears to be correct 1.85 acres x \$200 per acre = \$370). In each of the other three calculations, the numbers multiplied do not equal the product stated. Why the product stated in each of these three calculations is not the result of the acres and value per acre was not explained.

6. This Order shall only be applicable to tax year 2010.
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 (2010 Supp.), other provisions of Nebraska Statute and Court Rules.