

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

The Scoular Company,
Appellant,

v.

Chase County Board of Equalization,
Appellee.

Case No: 12C 100

Decision and Order Reversing the Chase
County Board of Equalization

For the Appellant:

Sheila Lenagh, Director of Tax,
The Scoular Company,
Pro Se.

For the Appellee:

Arlan Wine,
Chase County Attorney.

This appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a 4.05 acre parcel improved with a commercial grain storage building and equipment shed located in Chase County, Nebraska. The legal description of the parcel is found at Exhibit 1. The Property Record Card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Chase County Assessor determined that the assessed value of the Subject Property was \$1,771,237 for tax year 2012. The Scoular Company (herein referred to as the “Taxpayer”) protested this assessment to the Chase County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of \$1,059,995. The County Board determined that the taxable value for tax year 2012 was \$1,680,489.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission and stipulated to the receipt of exchanged exhibit. The Commission held a hearing on June 4, 2013.

¹ E1.

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 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

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

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 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.⁸

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

² See, Neb. Rev. Stat. §77-5016(8) (2012 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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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. 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).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁹ 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.”¹⁰

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.¹¹

“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.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

B. Summary of the Evidence

Sheila Lenagh, the Taxpayer’s Director of Tax, testified at the hearing before the Commission. Mark Mossman, the Taxpayer’s Northern Facilities Group Manager, also testified. Their testimony indicates that the Subject Property’s grain storage facility is known as a “Cover-

⁹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

All” that has a canvas hoop-arch exterior and a dirt floor.¹⁷ Their testimony also indicates that the Cover-All manufacturer went bankrupt after its building used by the Dallas Cowboys as a training facility was destroyed by a wind event.¹⁸

The Taxpayer asserts that the County’s cost approach overvalued the grain storage building situated on the Subject Property for tax year 2012 for the following reasons: (1) failure to include a perimeter adjustment; (2) incorrect categorization as a metal storage building with a concrete floor; (3) failure to adjust for unused square footage; (4) failure to consider bankruptcy of building manufacturer and consequent loss of warranty protection; and (5) failure to consider external risk factors.¹⁹

The Taxpayer provided a side-by-side comparison of the taxable value calculations by the Taxpayer and the County at the protest level regarding the Cover-All grain storage building.²⁰ This document shows that the Taxpayer’s formula for addressing the above-noted allegations regarding the insufficiency of the County’s cost approach involves the following: (1) inclusion of a -\$3.38 perimeter adjustment; (2) use of the average of the base costs of Marshall & Swift building code 493 (Flathouse S) and code 421 (Class D Hoop Arch); (3) adjustment for unused square footage and the dirt floor; (4) 30% functional depreciation to address the loss of warranty protection stemming from the bankruptcy of the building manufacturer; and (5) 5% depreciation for external risk factors.²¹ This formula results in a \$1,978,156 Replacement Cost New (“RCN”) value of the storage building and a Replacement Cost New Less Depreciation (“RCNLD”) value in the amount of \$1,052,379.

Darrel Stanard and Mark Stanard, certified appraisers hired by the Chase County Assessor, testified on behalf of the County Board regarding the cost approach valuation of the grain storage building. Darrel Stanard testified that the County Assessor’s notice value issued to the Taxpayer prior to the 2012 tax year protest period applied 44% physical depreciation to the \$3,149,241 RCN value of the storage building, resulting in a RCNLD value in the amount of \$1,763,575.²² Subsequent to the Taxpayer’s protest of this notice value, and consistent with his understanding of a settlement between the County and the Taxpayer for the 2011 tax year that stemmed from a

¹⁷ See, 3:2 & E3:27 (indicates that the grain storage building is a part of the “Titan Building” line manufactured by Cover-All Building Systems, Inc.).

¹⁸ See, E3:27 – E3:31.

¹⁹ E3:2.

²⁰ E3:8.

²¹ E3:8.

²² E2:14.

Commission ruling issued in December 2011 regarding the 2010 tax year, Stanard testified that he revised the storage building's cost valuation by applying 36% physical depreciation and 17% functional depreciation to the \$3,149,241 RCN, resulting in RCNLD in the amount of \$1,680,489.²³ The County Board relied on this \$1,680,489 revised opinion of value for the grain storage building for tax year 2012.

Mark Stanard testified that the grain storage building is most appropriately categorized under Marshall & Swift code 493, "Flathouse Storage Buildings."²⁴ He disagreed with the Taxpayer's assertion that the appropriate classification of the storage facility is Marshall & Swift code 421, "Class D Hoop Arch."²⁵

C. Analysis

1. Perimeter Adjustment

The Taxpayer asserted that the County Assessor failed to apply a perimeter adjustment to the Cover-All grain storage building located on the Subject Property. The *Marshall Valuation Service* published by Marshall & Swift requires a perimeter adjustment for the both the Cover-All and equipment shed located on the Subject Property.²⁶ A review of the cost detail for the Subject Property indicates that a perimeter adjustment was not applied to either the Cover-All or the equipment shed.²⁷ Therefore, the Commission finds that the County Board's determination of the actual value of the Subject Property for tax year 2012 was arbitrary or unreasonable.

The Taxpayer submitted a perimeter adjustment calculation for the Cover-All, which uses a .820 multiplier from the applicable Marshall & Swift table.²⁸ The Commission finds that multiplier should be .863 rather than .820.

In order to determine the perimeter multiplier for a large building like the Cover-All, Marshall & Swift instructs the appraiser to utilize the table by taking "half the area and half the perimeter."²⁹ The Taxpayer interpreted this instruction to mean the following: "half area and half perimeter until it fits with table."³⁰ Rather than continuing to half both the perimeter and the

²³ E2:15 & E 2:17.

²⁴ See, E3:10.

²⁵ See, E3:11.

²⁶ See, E3:5 (*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

²⁷ See, E2:17; See also, E3:2.

²⁸ See, E3:2-7.

²⁹ E3:5(*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

³⁰ E3:7.

area until both the perimeter and the area fit on the table, Marshall & Swift instructs the appraiser to simply half the area and half the perimeter and then find the nearest fit on the table.³¹ Thus, while the Taxpayer correctly determined that a perimeter adjustment was necessary, its proposed adjustment is incorrect in part because the perimeter multiplier used in its calculation is incorrect.

According to the Property Record Card for the Subject Property, the Cover-All's area is 104,004 sq. ft. and its perimeter is 1,608 ft.³² Under the above-noted Marshall & Swift instructions, half the area and half the perimeter would be 52,002 sq. ft for area and 804 ft. for perimeter. Using the multiplier table's "nearest fit" 25,000 sq. ft. area and 800 ft. perimeter coordinates indicates that the correct perimeter multiplier is .863 rather than .820.³³

The Cover-All's base cost is \$25.40 per square foot under Marshall & Swift's code 493 classification (Class S Flathouse Storage Building).³⁴ Use of the above-noted .863 multiplier results in a -\$3.48 perimeter adjustment.³⁵ Applying both the -\$3.48 perimeter adjustment and the \$4.88 height adjustment referenced in the Property Record Card results in an adjusted base cost of \$26.80.³⁶

For purposes of determining the actual value of the Cover-All for tax year 2013, the \$26.80 adjusted base cost is multiplied by the building's 104,004 sq. ft. area to derive an RCN of \$2,787,307.20. Applying the County's revised depreciation opinion (36% physical depreciation and 17% functional depreciation) to this RCN results in an RCNLD for the Cover-All in the amount of \$1,480,617.59, which rounds to \$1,480,620.³⁷

The equipment shed located on the Subject Property has a 150 sq. ft. area and a 50 ft. perimeter.³⁸ For small buildings such as the equipment shed, the Marshall & Swift perimeter adjustment multiplier table requires doubling the 150 sq. ft. area in order to find the nearest fit on the table to correspond with the stated 50 ft. perimeter coordinate.³⁹ Using the multiplier table's

³¹ See, E3:5 (*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

³² See, E2:15 & E2:17.

³³ See, E3:5 (*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

³⁴ See, E2:15 & E2:17.

³⁵ $\$25.40 \text{ base cost} \times .863 = \21.92 ; $\$21.92 - \$25.40 = -\$3.48$

³⁶ See, E2:15 & E2:17; $\$25.40 - \$3.48 + \$4.88 = \26.80 .

³⁷ See, E2:15 & E2:17; $\$2,787,307.20 \text{ (RCN)} \times .64 \text{ (36\% physical depreciation)} = \$1,783,876.61$; $\$1,783,876.61 \times .83 \text{ (17\% functional depreciation)} = \$1,480,617.59 \text{ (RCNLD)}$.

³⁸ See, E2:15 & E2:17 (The Property Record Card states that the equipment shed has a 150 sq. ft. area. While the Property Record Card does not set forth the equipment shed's perimeter, a building with a 150 sq. ft. area has a 50 ft. perimeter.).

³⁹ E3:5 (*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

“nearest fit” 500 sq. ft. area and 50 ft. perimeter coordinates indicates that the correct perimeter multiplier is 1.044.⁴⁰

The equipment shed’s base cost is \$16.31 per square foot under Marshall & Swift’s code 472 classification.⁴¹ Use of the above-noted 1.044 multiplier results in a \$.72 perimeter adjustment.⁴² Applying both the \$.72 perimeter adjustment and the \$.31 height adjustment referenced in the Property Record Card results in an adjusted base cost of \$17.34.⁴³

For purposes of determining the actual value of the equipment shed for tax year 2013, the \$17.34 adjusted base cost is multiplied by the building’s 150 sq. ft. area to derive an RCN of \$2,601. Applying the County’s 2% physical depreciation to this RCN results in an RCNLD for the equipment shed in the amount of \$2,548.98, which rounds to \$2,550.

2. Marshall & Swift Classification

The Taxpayer asserted that the County’s categorization of the Cover-All as a Class S Flathouse Storage Building under Marshall & Swift building code 493 is incorrect. Flathouses are defined under the Marshall & Swift classification system as “large grain or rice storage structures” for commercial use.⁴⁴ Class S Flathouses include steel frames and concrete slabs.⁴⁵ Thus, because the Cover-All features a canvas hoop-arch exterior with a dirt floor, the Taxpayer asserted that the base cost of the building should be an average of the Class S Flathouse and Class D Hoop Arch categories, and that a \$2 per square foot adjustment should be allowed to account for the dirt floor.⁴⁶

A photo of the Cover-All is found at Exhibit 3, page 12. Stanard testified that the Class D Hoop Arch category is used for small structures that are not comparable to the Cover-All, which is 104,004 square feet in terms of area and is used in connection with the Taxpayer’s commercial operations.

Stanard testified that the Cover-All’s hoop structure includes steel framing anchored by large slabs of concrete. Stanard further testified that approximately 30% of the Cover-All’s interior consists of concrete. The Taxpayer did not challenge this testimony.

⁴⁰ See, E3:5 (*Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 60).

⁴¹ See, E2:15 & E2:17.

⁴² $\$16.31 \text{ base cost} \times 1.044 = \17.03 ; $\$17.03 - \$16.31 = \$.72$

⁴³ See, E2:15 & E2:17; $\$16.31 + .72 + .31 = \17.34 .

⁴⁴ *Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2013), Section 17 at pgs. 1 & 3.

⁴⁵ E3:10; *Marshall Valuation Service*, Marshall & Swift/Boeckh, LLC, (5/2011), Section 17 at p. 24.

⁴⁶ See, E3:2 & E3:8.

Stanard used an average of the price per square foot for the good and average quality Class S Flathouses for purposes of determining a base cost of \$25.40 per square foot.⁴⁷ The Commission finds that the Taxpayer did not adduce sufficient evidence to show that Stanard's treatment of the Cover-All as a Class S Flathouse with a base cost of \$25.40 per square foot was arbitrary or unreasonable. The Commission further finds that the Taxpayer did not adduce sufficient evidence to show that the County's 17% functional depreciation allowance does not address the Taxpayer's concern regarding the Cover-All's dirt floor.

3. Cost Adjustment for Unused Storage Area

The Taxpayer asserted that the Cover-All should receive a 15% functional depreciation allowance because approximately 15% of the building is not used for grain storage purposes.⁴⁸ In response, the County asserted that it should not be required to adjust its valuation based on use of the storage facility that is at least partially within the Taxpayer's discretion.

The Commission notes that Class S Flathouse buildings are subject to storage issues similar to the Cover-All, and a review of the *Marshall & Swift Valuation Service* and other appraisal literature does not disclose a requirement regarding adjustment for unused space. The Commission also notes that the County Board adopted Stanard's revised opinion of value that included 17% functional depreciation. There is no evidence that this functional depreciation allowance does not sufficiently address the Taxpayer's concern regarding unused storage area.

4. Loss of Warranty & External Risk

Stanard assigned 36% physical and 17% functional depreciation to the Cover-All. There is no evidence that this depreciation allowance does not sufficiently address the Taxpayer's assertions regarding loss of warranty and external risk.

⁴⁷ See, E2:17 E3:10 & E3:19.

⁴⁸ See, E3:2 & E3:8.

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 is vacated and reversed, and the actual value of the Subject Property is as follows for tax year 2012:

Land	\$ 5,169
Equipment Shed	\$ 2,550
<u>Cover-All</u>	<u>\$1,480,620</u>
Total	\$1,488,339

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Chase County Board of Equalization determining the value of the Subject Property for tax year 2012 is vacated and reversed.⁴⁹
2. The assessed value of the Subject Property for tax year 2012 is:

Land	\$ 5,169
Equipment Shed	\$ 2,550
<u>Cover-All</u>	<u>\$1,480,620</u>
Total	\$1,488,339

3. This decision and order, if no appeal is timely filed, shall be certified to the Chase County Treasurer and the Chase County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)

⁴⁹ Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

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 2012.
7. This decision and order is effective for purposes of appeal on August 28, 2014.

Signed and Sealed: August 28, 2014.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.