

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Brian L. Matthewson,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Decision and Order Affirming the Decisions
of the County Board of Equalization in 12R
132 and 13R 507-509

Decision and Order Reversing the Decisions
of the County Board of Equalization in 12R
133-134 and 13R 505-506

For the Appellant:

Brian L. Matthewson & Jody Matthewson,
Pro Se

For the Appellee:

Joe W. Wright,
Deputy Lincoln County Attorney

These evidentiary appeals were heard by Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property in Cases 12R 132 and 13R 505 is a residential parcel located at 121 S. Sycamore Street, in the City of North Platte, Lincoln County, Nebraska. The parcel is improved with a 2,257 square foot home, built in 1933.

The Subject Property in Cases 12R 133 and 13R 506 is a residential parcel located at 708 E. 5th Street, in the City of North Platte, Lincoln County, Nebraska. The parcel is improved with a 1,648 square foot home, built in 1910.

The Subject Property in Cases 12R 134 and 13R 508 is a residential parcel located at 1900 W. 2nd Street, in the City of North Platte, Lincoln County, Nebraska. The parcel is improved with a 560 square foot home, built in 1950.

The Subject Property in Case No. 13R 507 is a residential parcel located at 708 E. 9th Street, in the City of North Platte, Lincoln County, Nebraska. The parcel is improved with a 1,194 square foot home, built in 1932.

The Subject Property in Case No. 13R 509 is a residential parcel located at 802 W. 10th Street, in the City of North Platte, Lincoln County, Nebraska. The parcel is improved with a 1,598 square foot home, built in 1914.

The legal description of each of the five parcels listed above is found in the respective case files. The property record card for each Subject Property is found in Exhibits 31-35.

II. PROCEDURAL HISTORY

In Cases 12R 132 and 13R 505, the Lincoln County Assessor (County Assessor) determined that the assessed value of the Subject Property for both tax years 2012 and 2013 was \$122,500.¹ Brian L. Matthewson protested this assessment to the Lincoln County Board of Equalization (the County Board) and requested an assessed valuation of \$66,500.² The County Board determined that the taxable value for both tax years 2012 and 2013 was \$122,500.³ Matthewson appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission).

In Case 12R 133, the County Assessor determined that the assessed value of the Subject Property for tax year 2012 was \$93,800.⁴ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$72,000.⁵ The County Board determined that the taxable value for tax year 2012 was \$82,955.⁶ Matthewson appealed the decision of the County Board to the Commission.

In Case 13R 506, the County Assessor determined that the assessed value of the Subject Property for tax year 2013 was \$82,955.⁷ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$62,550.⁸ The County Board determined that the taxable value for tax year 2013 was \$82,955.⁹ Matthewson appealed the decision of the County Board to the Commission.

¹ Exhibits 1:1,3, and 2:1-2.

² Exhibit 2:1.

³ Exhibits 1:1 and 2:1.

⁴ Exhibit 3:1.

⁵ Exhibit 3:1.

⁶ Exhibit 3:1.

⁷ Exhibit 4:1.

⁸ Exhibit 3:1.

⁹ Exhibit 4:1.

In Case 12R 134, the County Assessor determined that the assessed value of the Subject Property for tax year 2012 was \$47,485.¹⁰ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$25,000.¹¹ The County Board determined that the taxable value for tax year 2012 was \$46,970.¹² Matthewson appealed the decision of the County Board to the Commission.

In Case 13R 508, the County Assessor determined that the assessed value of the Subject Property for tax year 2013 was \$56,700.¹³ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$42,600.¹⁴ The County Board determined that the taxable value for tax year 2013 was \$49,030.¹⁵ Matthewson appealed the decision of the County Board to the Commission.

In Case 13R 507, the County Assessor determined that the assessed value of the Subject Property for tax year 2013 was \$85,115.¹⁶ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$64,170.¹⁷ The County Board determined that the taxable value for tax year 2013 was \$85,115.¹⁸ Matthewson appealed the decision of the County Board to the Commission.

In Case 13R 509, the County Assessor determined that the assessed value of the Subject Property for tax year 2013 was \$76,845.¹⁹ Matthewson protested this assessment to the County Board and requested an assessed valuation of \$67,495.²⁰ The County Board determined that the taxable value for tax year 2013 was \$76,845.²¹ Matthewson appealed the decision of the County Board to the Commission.

All of the Cases cited above were consolidated for hearing by order of the Commission. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties had

¹⁰ Exhibit 5:1.

¹¹ Exhibit 5:1.

¹² Exhibit 5:1.

¹³ Exhibit 6:1

¹⁴ Exhibit 6:1.

¹⁵ Exhibit 6:1.

¹⁶ Exhibit 7:1.

¹⁷ Exhibit 7:1.

¹⁸ Exhibit 7:1.

¹⁹ Exhibit 8:1.

²⁰ Exhibit 8:1.

²¹ Exhibit 8:1.

the opportunity to stipulate to the receipt of exchanged exhibits. The Commission held a consolidated hearing on June 11, 2011.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.²² 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."²³

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.²⁴

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.²⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²⁶

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²⁷ 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.²⁸

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

²² 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).

²³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

²⁴ *Id.*

²⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

²⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁷ 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).

²⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”²⁹ 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.”³⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.³¹

IV. VALUATION

A. Applicable 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.³²

“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.”³³ “Actual value, market value, and fair market value mean exactly the same thing.”³⁴ 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.³⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.³⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁷

²⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

³⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

³¹ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

³² Neb. Rev. Stat. §77-112 (Reissue 2009).

³³ *Id.*

³⁴ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

³⁶ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Findings of Fact & Conclusions of Law

Jody Matthewson testified on behalf of herself and her husband, Brian Matthewson. She asserted that the County Assessor and the County Board had determined the depreciation of each Subject Property in error. She testified to her belief that depreciation should have been based upon condition and age. She asserted that the County Board and County Assessor had determined the depreciation of the Subject Properties based upon condition and effective age, which in her view was effectively “double-dipping” in order to drive up taxable value.

According to the *Residential Cost Handbook*, depreciation is “loss in value due to any cause. It is the difference between the market value of a structural improvement ... and its reproduction or replacement cost as of the date of valuation. Depreciation is divided into three general categories,” physical, functional, and external.³⁸ “While age is a critical factor, the best approach to the physical depreciation estimate is a combination of age and condition.”³⁹

Effective age of a property is its age as compared with other properties performing like functions. It is the actual age, less the age which has been taken off by face-lifting, structural reconstruction, removal of functional inadequacies, modernization of equipment, etc. It is an age which reflects a true remaining life for the property, taking into account the typical life expectancy of buildings or equipment of its class and its usage. It is a matter of judgment, taking all factors, current and those anticipated in the immediate future, into consideration. Determination of effective age on older structures may best be calculated by establishing a remaining life which, subtracted from a typical life expectancy, will result in an appropriate effective age with which to work. Effective age can fluctuate year by year or remain somewhat stable in the absence of any major renewals or excessive deterioration.⁴⁰

General condition ratings can be assigned to the improvement to assist in the development of an appropriate effective age based on observed condition, utility and age. The better the overall condition, the younger or lower the effective age, which lowers the percentage and amount of depreciation. Condition is an integral part in measuring the degree at which items subject to depreciation have been maintained. Applying any additional condition modifier once the effective age has been established based on condition would be redundant.⁴¹

While the property record files for the Subject Properties include notations including age, condition, and effective age, no evidence was adduced to support Matthewson’s assertions

³⁸ Marshall & Swift, *Residential Cost Handbook*, 6/2014, page E-1.

³⁹ Marshall & Swift, *Residential Cost Handbook*, 6/2014, page E-1.

⁴⁰ Marshall & Swift, *Residential Cost Handbook*, 6/2014, page E-1.

⁴¹ Marshall & Swift, *Residential Cost Handbook*, 6/2014, page E-6.

regarding “double dipping.” We find that Matthewson’s assertions that the depreciation calculations of the Subject Properties were done inconsistently with appraisal standards are not supported in the record. We also find that there is not clear and convincing evidence that the County Board relied upon assessments that improperly calculated depreciation.

Jody Matthewson also testified that for each of the five Subject Properties the County Assessor had requested an internal inspection and the Matthewsons had denied the request. She agreed that the requests for internal inspections were made, and that the information derived from the inspections would have been relevant for the taxable value determinations of the Subject Properties for tax years 2012 and 2013.

Matthewson also asserted that two of the Subject Properties were overassessed because exterior concrete slabs were deemed to have foundations when, in her opinion, they did not have foundations. Other than Matthewson’s assertion that the concrete slabs should not have been assessed as having foundations, no evidence was received that was determinative as to whether the concrete slabs actually had foundations or not.

Charity Farley, Lead County Appraiser for the County Assessor since October, 2010,⁴² testified she was familiar with the Marshall & Swift Residential Cost Handbook and the related standards applying to depreciation determinations. Farley was present during the testimony of Jody Matthewson and she stated that she disagreed with Matthewson’s assertions regarding “double dipping” and depreciation. Farley testified that depreciation determinations for each Subject Property were made based upon exterior inspections and last-known property characteristics data in the property record files for each property. Farley also stated that an actual interior inspection may be more reliable than property record card data, but when the owner of the property refuses to allow an interior inspection the County Assessor uses the last-known data. She indicated that such last-known data would have been based upon interior and exterior inspections from prior years. Farley asserted that disputes with the property owner

⁴² Farley testified that she also held the State Assessor Certificate.

regarding the physical attributes and condition of the Subject Properties may have been able to be resolved had the owner not refused requests for interior inspections.⁴³

Farley further testified that some corrections to the property record files were made to several of the Subject Properties as a result of exterior-only inspections of three of the Subject Properties on September 27, 2013. She testified that when incorporating these corrections, her opinions of actual value for some of the Subject Properties were different from the taxable value as determined by the County Board at the time of each protest proceeding. Farley's opinions of value, after the September 27, 2013, inspections, and a brief description of the reasons for her revised opinions are as follows:

121 S. Sycamore:⁴⁴

12R 132	\$122,500	No revised opinion
13R 505	\$121,070	Revised: composition shingles added during tax year 2012

708 E. 5th:⁴⁵

12R 133	\$ 82,135	Revised: corrections made relating to porch and wood deck
13R 506	\$ 82,135	Revised: corrections made relating to porch and wood deck

1900 W. 2nd:⁴⁶

12R 134	\$ 46,605	Revised: quality rating changed to low
13R 508	\$ 49,030	No revised opinion: further adjustments made for tax year 2013

708 E. 9th:⁴⁷

13R 507	\$ 85,115	No revised opinion
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802 W. 10th:⁴⁸

13R 509	\$ 76,845	No revised opinion
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⁴³ Matthewson asserted the assessments of the Subject Properties were improper and incorrect because they did not take into consideration such things as attic space measurements and utility, water damage in a basement, and other physical attributes that could only be verified by an internal inspection.

⁴⁴ Exhibit 31.

⁴⁵ Exhibit 32.

⁴⁶ Exhibit 33.

⁴⁷ Exhibit 34.

⁴⁸ Exhibit 35.

Julie Stenger, the Lincoln County Assessor, testified that she agreed with the testimony given by Charity Farley including her revised opinions of value for each of the Subject Properties. Other than the revised opinions of actual value given by Charity Farley, there was no other clear and convincing evidence adduced that the County Board's determinations of taxable value were arbitrary or unreasonable.

V. CONCLUSION

The Commission finds that in Cases 12R 132 and 13R 507-509 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 determinations. The Commission also finds that in Cases 12R 132 and 13R 507-509 there is not clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable. For all of the reasons set forth above, the determinations by the County Board in Cases 12R 132 and 13R 507-509 should be affirmed.

The Commission finds that in Cases 12R 133-134 and 13R 505-506 there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that in Cases 12R 133-134 and 13R 505-506 there is clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable.⁴⁹ For all of the reasons set forth above, the determinations by the County Board in Cases 12R 133-134 and 13R 505-506 should be vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board determining the taxable values of the Subject Properties in Cases 12R 132 and 13R 507-509 are affirmed.
2. The decisions of the County Board determining the taxable values of the Subject Properties in Cases 12R 133-134 and 13R 505-506 are vacated and reversed.

⁴⁹ Taxable 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 at the protest proceeding.

3. The taxable values of the Subject Properties are as follows:

Case 12R 132	\$122,500
Case 13R 505	\$121,070
Case 12R 133	\$ 82,135
Case 13R 506	\$ 82,135
Case 12R 134	\$ 46,605
Case 13R 508	\$ 49,030
Case 13R 507	\$ 85,115
Case 13R 509	\$ 76,845

4. This Decision and Order, if no appeal is timely filed, shall be certified to the County Treasurer and the County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2012 and 2013.
8. This Decision and Order is effective for purposes of appeal on October 15, 2014.

Signed and Sealed: October 15, 2014

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 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.