

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Pat J. Chudomelka Living Trust, Pat J. Chudomelka, Trustee,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 12R 1176

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

GENERAL BACKGROUND AND PROCEDURAL HISTORY

1. The real property subject to appeal (herein referred to as the “Subject Property”) is a residential parcel located at 1640 Skyline Drive, Douglas County, Nebraska, with a legal description of: LANDS SEC-TWN-RGE 26-15-10 IRREG S 150 N 320 FT BET RIVER & H/W S ½ N ½.
2. The Douglas County Assessor assessed the Subject Property at \$365,800 for tax year 2012.
3. Pat J. Chudomelka Living Trust, Pat J. Chudomelka, Trustee (herein referred to as the “Taxpayer”), protested this value to the Douglas County Board of Equalization (herein referred to as the “County Board”).
4. The County Board determined that the assessed value of the Subject Property was \$365,800 for tax year 2012.
5. The Taxpayer appealed the determination of the County to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on August 29, 2013, at the Omaha State Office Bldg., 1313 Farnam, Rm. 227, Omaha, NE, before Commissioner Thomas D. Freimuth.
7. Keith A. Wagner was present at the hearing for the Taxpayer. Mr. Wagner is the spouse of Pat J. Chudomelka, the Taxpayer’s sole Trustee. Pat J. Chudomelka has granted Power of Attorney rights to Mr. Wagner, including the right to represent her interests before the Commission.
8. Kevin Corcoran and Brian Grimm, assessors with the Douglas County Assessor’s Office, were present for the County Board.

STANDARD OF REVIEW

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

14. The Taxpayer asserted that both the assessed improvement value and the assessed land value for the Subject Property were overvalued.
15. The Taxpayer asserted that the Subject Property was purchased in 2005, and that the improvements located on the Subject Property had been vacant for nine years as of the date of assessment. The Taxpayer asserted that shifting foundations prior to the assessment date resulted in the necessary demolition of the improvements in 2012. The Taxpayer indicated that this condition was apparent prior to the date of assessment.
16. The Taxpayer further asserted the land component of the Subject Property had been overvalued. The Taxpayer produced Property Record Files for two alleged comparable properties for purposes of constructing his opinion of value for the land component.
17. The alleged comparable properties include a property located just to the north of the Subject Property consisting of 1 acre of developed land and 6.49 acres of undeveloped land (herein referred to as the “North Comp”),⁸ and a property located just to the south of the Subject Property consisting of 12.21 acres of Primsite (herein referred to as the “South Comp”).⁹
18. The Commission notes that the Subject Property’s land consists of 3.1 acres of Primsite.¹⁰
19. The acre of Homesite located on the North Comp was assessed at \$29,373 per acre, and the undeveloped land was assessed at \$11,749 per acre.¹¹ The Primsite on the South

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 See, Property Record File for parcel #2225562850.

⁹ See, Property Record File for parcel #0110160002.

¹⁰ See, Subject Property’s Property Record File.

¹¹ See, Property Record File for parcel #2225562850.

Comp was assessed at \$8,403 per acre.¹² The Primsite on the Subject Property was assessed at \$34,895 per acre.¹³

20. The County Board and the Taxpayer agreed that of the Subject Property was more comparable with the South Comp rather than the North Comp.
21. The Taxpayer asserted that the Subject Property's land component should be valued at \$8,403 per acre just as the South Comp.
22. The County Board asserted that the per acre value of the South Comp should be less than the Subject Property because the South Comp consisted of four times as much land, and that the principles of diminishing returns and economies of scale indicated that the Subject Property's land value per acre had a greater actual value than the South Comp.
23. The County Board also asserted that the condition rating for the Subject Property should be Poor. The Assessment Report indicates that the Subject Property was assessed as Good condition. The Market Calculation Detail indicates that the Subject Property received a positive \$10,000 adjustment to account for the Good condition rating.
24. The County Board was unable to quantify the reduction in value that should have been given to the Subject Property to account for the incorrect condition rating.
25. The Property Record File for the South Comp indicates that properties with a Fair condition rating received a negative \$10,000 adjustment.

GENERAL VALUATION LAW

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.¹⁴
27. "Actual value, market value, and fair market value mean exactly the same thing."¹⁵
28. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁶
29. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷
30. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸
31. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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. Actual 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

¹² See, Property Record File for parcel #0110160002.

¹³ See, Subject Property's Property Record File.

¹⁴ 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).

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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.¹⁹

VALUATION ANALYSIS

32. The Commission finds that the land components of the North Comp and South Comp are not similar to the Subject Property's land component. The Commission also finds that additional review of the Property Record Files of comparable properties found in the Assessment Report indicates that the County Assessor assigned less value per acre to larger parcels of land as compared to smaller parcels. This is consistent with general appraisal principles.
33. While the Taxpayer asserted that the larger parcels were actually worth more per acre because of the small supply and high demand for such lots, the Taxpayer did not provide evidence to quantify this assertion.
34. The Commission finds that there is not clear and convincing evidence that the value attributed to the land component of the Subject Property was unreasonable or arbitrary.
35. The unrefuted evidence indicated that the Subject Property should have a condition rating of Poor for the tax year 2012, but that Subject Property was assessed at a condition rating of Good.
36. The Commission finds that the County Board's determination of the improvement value of the Subject Property is arbitrary or unreasonable because it relies upon the County Assessor's opinion of value calculated using an incorrect condition rating.
37. At the hearing before the Commission, however, the parties were not able to quantify the negative adjustment attributable to a Poor condition rating.
38. The Commission notes that a Fair condition rating is superior to a Poor condition rating. The Property Record Files in evidence indicate that the Fair condition rating would result in a \$10,000 negative adjustment. The Subject Property's condition is worse than Fair. While the evidence would indicate that the Subject Property should receive a greater negative adjustment than the properties with a Fair condition rating, there is no evidence to allow the Commission to quantify how much greater the negative adjustment would be for a Poor condition rating.
39. The Subject Property received a \$10,000 positive adjustment for a Good condition rating. The Commission finds that this positive \$10,000 adjustment should be removed.
40. The Commission finds that the evidence in this case indicates that the Subject Property should receive at least a negative \$10,000 adjustment to account for the Poor condition rating.
41. The Commission finds that assessed value of the Subject Property's improvement component for tax year 2012 should be lowered from \$257,600 to \$237,600.

CONCLUSION

42. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2009).

43. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated and reversed.

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 2012 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2012 is:

Land	\$108,200
<u>Improvements</u>	<u>\$237,600</u>
Total	\$345,800

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 (2012 Cum. Supp.).
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 on July 10, 2014.

Signed and Sealed: July 10, 2014

Thomas D. Freimuth, Commissioner