

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Reeder Family LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14C 246

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

For the Appellant:

Steven Reeder, Member,
Reeder Family LLC,
Pro Se

For the Appellee:

Shakil A. Malik
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located at 8204 Serum Avenue, Ralston, Douglas County, Nebraska. The parcel is improved with three commercial storage buildings. The legal description of the parcel is found at Exhibit 2. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor (County Assessor) determined that the assessed value of the Subject Property was \$303,400 for tax year 2014. Reeder Family LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$240,000. The County Board determined that the taxable value for tax year 2014 was \$303,400.¹

¹ Exhibit 1.

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. The Commission held a hearing on May 16, 2017.

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

² See, Neb. Rev. Stat. §77-5016(8) (2016 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(9) (2016 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).

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.”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 The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. 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.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 “Actual 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

⁹ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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

¹³ *Id.*

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).

V. SUMMARY OF THE EVIDENCE

The Subject Property includes three commercial storage buildings. Building 1 is 4,800 square feet in size, was built in 1976 with fair quality materials, and is in fair condition. Building 2 was built in 1985. Its size is 2,340 square feet. It is rated at fair quality and is in average condition. Building 3 is 5,160 square feet in size, was built in 2004 with average quality materials, and is in average condition. The taxpayer did not dispute the quality and condition ratings determined by the County Assessor.

Steven Reeder testified on behalf of the Taxpayer. Mr. Reeder provided actual income and expense information for the Subject Property in order to develop an income approach to value.¹⁸ Mr. Reeder mainly disputed the capitalization rate that was used by the County Assessor to determine the actual value of the Subject Property. He argued that the appropriate capitalization rate for each of the three buildings was 10%. Mr. Reeder also testified that Building 1 had heat and water, but Buildings 2 and 3 did not. Based upon Mr. Reeder's income approach, the actual value of the Subject Property was \$240,750.

Keith Nielsen, an employee of the County Assessor, testified on behalf of the County Board. Mr. Nielsen stated that the County Assessor relied upon market information to develop a model for the valuation of the Subject Property. He stated that the County Assessor utilized a 10% capitalization rate to determine the actual value of Buildings 1 and 2, but a capitalization rate of 8.5% was used for Building 3. Mr. Nielsen testified that the reason for the lower capitalization rate for Building 3 was because of its newer age. Mr. Nielsen also explained the County Assessor's reliance upon capitalization rate studies and trends relating to the structure of leases in the market during the appropriate time frame. The Commission finds that the methodology followed by the County Assessor to determine the actual value of the Subject Property was reasonable and not arbitrary.

VI. CONCLUSION

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

¹⁸ Exhibit 3.

determination. The Commission also finds that there is not 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 should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board determining the value of the Subject Property for tax year 2014 is affirmed.
2. The taxable value of the Subject Property for tax year 2014 is \$303,400.
3. This Decision and 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 (2016 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 2014.
7. This Decision and Order is effective for purposes of appeal on May 19, 2017.¹⁹

Signed and Sealed: May 19, 2017

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

¹⁹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.