

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Lord of Hosts World Outreach, Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 0818

Decision and Order

For the Appellant:

Douglas W. Ruge,
Attorney at Law

For the Appellee:

Shakil A. Malik,
Douglas County Attorney

This appeal was heard before Commissioners Steven A. Keetle and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Douglas County. The parcel is improved with a 59,796 square foot shopping complex with rentable bays suitable for office and retail uses, although a majority of the space is occupied by a church. The legal description of the parcel and the property record card are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$2,574,600 for tax year 2015. Lord of Hosts World Outreach, Inc. (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). On August 4, 2015, the County Board determined that the taxable value for tax year 2015 was \$1,511,800.¹

On June 23, 2015, prior to the issuance of the County Board's decision reducing the property's taxable value, the Taxpayer filed an application for tax exemption with the county assessor. On August 18, 2015, the County Board granted a partial exemption for the property, but it did not reduce the value of the property from \$1,511,800 at that time. On October 29,

¹ Exhibit 1.

2015, treating the failure to apply the partial exemption to the property as a clerical error, the County Board reduced the assessed value of the property to \$542,800.² The Taxpayer protested this value to the County Board, and on December 15, 2015, the County Board denied the protest.

On January 5, 2016, the Taxpayer appealed the December 15, 2015, decision of the County Board to the Tax Equalization and Review Commission (Commission). The parties stipulated to the receipt of Exhibits 1 through 3. The Commission held a hearing on November 17, 2017. Commissioner Keetle presided at the hearing.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ 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."⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

² The record includes only indirect evidence of the County Board's October 29 action and the Taxpayer's protest. At the hearing, the parties stipulated to the facts described here.

³ 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).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ “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.”⁹ 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.¹⁰

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.”¹¹ 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.”¹² The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

IV. FACTS AND ANALYSIS

Neither party to this case offered any testimony from witnesses. The Taxpayer submitted exhibits with information related to its income and expenses from the property. Those exhibits included a document, apparently authored by its legal counsel, which states, in part:

I have consulted retail brokers and asked them what the retail/office property would be worth from an income approach. They agree that a 10 cap is appropriate for this area. Based upon a ten cap and net income, this would equate to an assessed value of approximately \$250,000 to \$300,000.¹⁴

⁸ 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).

⁹ *Id.*

¹⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹⁴ Ex. 3 at 2.

In order to prevail on an appeal to the Commission, a taxpayer must first rebut the presumption in favor of the County Board by presenting competent evidence that the board of equalization has not faithfully performed its official duties in making an assessment or has not acted upon sufficient competent evidence to justify its action. The Nebraska Supreme Court has determined that when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence for the purpose of rebutting the presumption.¹⁵ A property owner may testify to the worth of his or her property if the owner is familiar with the property and knows its worth,¹⁶ or a corporate officer may testify as to the property's worth if he or she is shown to be familiar with the property and have knowledge of values generally in the vicinity.¹⁷ No evidence of that quality is in the record here.

Counsel's opinion of the value of the parcels is not competent evidence, even if admitted as part of an exhibit. The statements of the unknown "retail brokers" as recorded in Counsel's memorandum are plainly hearsay, which is not otherwise admissible in proceedings before a panel of the Commission.¹⁸ The Commission gave no weight to these statements in considering this matter. The Taxpayer's remaining documents demonstrate some of the rents, incomes, and expenses attributable to the property, but they do not include the analytical or comparative information necessary to determine the actual value of the property.

In brief, the Taxpayer has failed to produce sufficient competent evidence to rebut the presumption in favor of the County Board. The Taxpayer's appeal must be denied.

V. 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 determination. The Commission also finds that there is not clear and convincing evidence that the determination of value by the County Board was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

¹⁵ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 126, 825 N.W.2d 447, 453 (2013).

¹⁶ *US Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

¹⁷ *Kohl's Dept. Stores v. Douglas County Bd. or Equal.*, 10 Neb. App. 809, 813-814, 638 N.W.2d 877, 881 (2002).

¹⁸ *Brenner* at 288.

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 2015 is affirmed.¹⁹
2. The assessed value of the Subject Property for tax year 2015 is \$542,800.
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 Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order and order shall only be applicable to tax year 2015.
7. This Decision and Order and order is effective for purposes of appeal on March 14, 2018.²⁰

Signed and Sealed: March 14, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

¹⁹ 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 of Equalization at the protest proceeding.

²⁰ 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.