

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Struve Enterprises, Inc.,
Appellant,

v.

Thayer County Board of Equalization,
Appellee.

Case No: 16C 0140

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

Background

1. The Subject Property is an 8 unit apartment building located at 130 S. 9th Street, City of Hebron, Thayer County, Nebraska. The legal description of the parcel is found in the Case File.
2. The Thayer County Assessor (the County Assessor) assessed the Subject Property at \$232,158 for tax year 2016.
3. The Taxpayer protested this value to the Thayer County Board of Equalization (the County Board) and requested an assessed value of \$159,436 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$232,158 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 14, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Lois D. Struve, President of Struve Enterprises, Inc. was present at the hearing. Brad Fegley, Certified Public Accountant, Joe Murray, Attorney of Record, and Jim Pederson were also present for the Taxpayer. Karla Joe, Thayer County Assessor, and Amy Peterson, Deputy Thayer County Assessor, were present for the County Board.

Applicable Law

8. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
9. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

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

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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

15. The County Assessor used the cost approach to value the Subject Property. Using the cost approach, the County Assessor deducted 55% physical depreciation and 15% economic depreciation from the replacement cost new.⁹
16. The parties agreed that there were only five other multi-unit apartment buildings in Thayer County. Three of the properties were low income properties under either Section 8 or Section 42.
17. No sales of any of the apartment buildings in Thayer County occurred during the relevant time period from which to analyze a depreciation factor for the cost approach. The County Assessor did not use an income approach or a sales comparison approach to determine the value of the Subject Property.

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

⁹ See, Property Record Card. The County Assessor also indicated that for tax year 2015 the physical depreciation deduction was 75%. She indicated that upon conducting a reappraisal for tax year 2016, she determined that the 75% physical depreciation was excessive.

18. In order to determine a physical depreciation factor, the County Assessor utilized sales from the relevant time period of Commercial properties in Thayer County.
19. The County Assessor provided the Commission with a survey of several single family residential rental properties in Hebron, Nebraska, to demonstrate her belief that the rent charged by the Taxpayer was below market rent. For each of these rentals the tenant paid all utilities. The Commission gives limited weight to the rental information from single family residential homes as being indicative of typical apartment unit rental amounts in Thayer County.
20. The Taxpayer provided expense and income information for the Subject Property. Actual income for calendar year 2015 was \$33,916 and actual expenses were \$23,829. In order to determine typical income and expenses, the Taxpayer's Certified Public Accountant contacted a licensed appraiser. According to Brad Fegley, Stanard Appraisal told him that typical expenses for this type of income-generating property would be 45% of income, and that the appropriate income capitalization rate would be 10%. No document from Stanard Appraisal was provided to the Commission. Fegley stated his belief, and Lois Struve also stated her belief that the actual income generated by the Subject Property would have been equal to the typical income generated by similar properties in the same market. The parties agreed that the local property tax rate was 1.7%.¹⁰ Based upon the information provided by the Taxpayer at the Hearing, the actual value of the Subject Property indicated by this modified income approach would be \$159,436.¹¹
21. The Commission gives limited weight to the Taxpayer's assertions regarding typical income and expenses and the income capitalization rate. Actual income of the Subject Property is not persuasive evidence of typical income in the market. Also, hearsay evidence of an appraiser's opinions regarding expenses or an income capitalization rate, without some basis for those opinions, falls short of clear and convincing evidence.
22. The Commission finds that there is insufficient information to conclude that the cost approach utilized by the County Assessor was arbitrary or unreasonable.
23. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

¹⁰ The "loaded" capitalization rate would equal 11.7% when combining the capitalization rate and the local property tax rate.

¹¹ $(\$33,916 \text{ (income)} - \$15,262 \text{ (expenses, 45\% of income)}) / 11.7\% = \$159,436$. See, Case File.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

| | |
|-------------|------------------|
| Land | \$ 12,375 |
| Improvement | <u>\$219,783</u> |
| Total | \$232,158 |

3. This Decision and Order, if no further action is taken, shall be certified to the Thayer County Treasurer and the Thayer 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 2016.
7. This Decision and Order is effective on August 15, 2017.

Signed and Sealed: August 15, 2017

Robert W. Hotz, Commissioner