

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

KME, LLC,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case No: 16C 0013

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

**For the Appellant:**  
KME, LLC,  
No Appearance

**For the Appellee:**  
Randy Fair,  
Keith 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 Keith County. The parcel is improved with a 2,068 square foot commercial building. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6.

**II. PROCEDURAL HISTORY**

The Keith County Assessor determined that the assessed value of the Subject Property was \$225,555 for tax year 2016. KME, LLC (the Taxpayer) protested this assessment to the Keith County Board of Equalization (the County Board) and requested an assessed valuation of \$111,672. The Keith County Board determined that the taxable value of the Subject Property for tax year 2016 was \$192,445.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Commissioner Nancy J. Salmon conducted a single commissioner hearing on May 31, 2017,<sup>2</sup> and on June 16, 2017, issued an order reversing the County Board and restoring the value of \$225,555 originally determined by the County Assessor.

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<sup>1</sup> E1.

<sup>2</sup> See Neb. Rev. Stat. §77-5015.02 (2016 Cum. Supp.).

On June 28, 2017, the Taxpayer requested rehearing before a panel of the Commission,<sup>3</sup> and on August 2, 2017, the Commission issued an order vacating the single commissioner decision and setting the matter for a panel hearing on November 17, 2017. The hearing was subsequently continued to January 26, 2018, by order issued November 6, 2017. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Only Exhibits 1-20 were offered at the hearing before the Commission, as no one appeared on behalf of the Taxpayer.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>4</sup> 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."<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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<sup>3</sup> See Neb. Rev. Stat. §77-5005(4) (2016 Cum. Supp.).

<sup>4</sup> 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).

<sup>5</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup>

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 [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>11</sup> 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.”<sup>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

## IV. LAW

### A. Valuation

Under Nebraska law,

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 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.<sup>14</sup>

“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.”<sup>15</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> Taxable value is the percentage of actual value

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<sup>9</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>10</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>15</sup> *Id.*

<sup>16</sup> *Omaha Country Club v. Douglas County Bd. of Equal., et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

## V. ANALYSIS

While no one appeared on behalf of the Taxpayer at the hearing to offer evidence or argument, the County Board offered into evidence the Taxpayer's protest to the County Board of Equalization.<sup>20</sup> This exhibit contains the allegation that the Subject Property is overvalued and not equalized with other alleged comparable properties and a listing of per square foot values. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>21</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by "clear and convincing evidence that the valuation placed upon his property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of a plain legal duty, and not mere errors of judgment."<sup>22</sup> The Property Record Files (PRF) for the alleged comparable properties were not offered at the hearing as required by paragraph 11 of the Order for Hearing.<sup>23</sup> Without the PRFs for the alleged comparable properties the Commission is unable to determine the comparability of those properties and therefore the Commission is unable to evaluate the Taxpayer's allegations.

The County Board offered the testimony of the Renae Zink, the County Assessor for Keith County (the Assessor).<sup>24</sup> The Assessor utilized comparable sales and characteristics of the properties to determine assessed values for tax year 2016. The Assessor initially determined an assessed value for the Subject Property of \$11,880 for land and \$213,675 for improvements, for a total assessed value of \$225,555.<sup>25</sup> After the filing of the protest, the Assessor reviewed the

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<sup>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>18</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>20</sup> E11.

<sup>21</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>22</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>23</sup> See Case File.

<sup>24</sup> See also E4.

<sup>25</sup> E1, & E4:2.

2016 valuation of the Subject Property and determined two errors with the initial assessment: first, the land component was valued using the residential property land valuation tables rather than the commercial property land valuation tables; and second, the value of the raised-porch-with-roof component of the improvements on the Subject Property was too high. After correcting these errors, the Assessor determined that the 2016 assessed value of the Subject Property should be \$16,435 for land and \$212,220 for improvements, for a total assessed value of \$228,655.<sup>26</sup> The Assessor testified that after reviewing the determination of the County Board, she was unable to determine the basis of the reduction in value made by the County Board.

The evidence before the Commission demonstrates that the actual value of the Subject Property as of the assessment date was \$228,655, based on the correct information regarding the land value and characteristics of the Subject Property. However, this value is greater than the highest taxable value for which notice was previously given, which was \$225,555. The Rules and Regulations of the Commission prohibit the Commission from finding a higher taxable value than \$225,555 under these circumstances.<sup>27</sup> The Commission, based on the evidence and requirements of law and procedure set forth above, finds and determines that the taxable value of the Subject Property for tax year 2016 should be \$225,555.

## **VI. CONCLUSION**

The Commission finds that there is 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 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 vacated and reversed.

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<sup>26</sup> E4:5.

<sup>27</sup> Title 442 Neb. Admin. Code. ch 5 §016.02A (6/11) (Requires intent to prove higher taxable value to be pled in writing prior to a hearing on the merits).

**VII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Keith County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is vacated and reversed.<sup>28</sup>
2. The taxable value of the Subject Property for tax year 2016 is: \$225,555.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Keith County Treasurer and the Keith 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 for purposes of appeal on October 3, 2018.<sup>29</sup>

Signed and Sealed: October 3, 2018.

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>28</sup> 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.

<sup>29</sup> 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.