

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Springfield Business Park LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16C 0157, 17C 0240

Decision and Order Affirming in part and
Reversing in part the Determinations of the
Douglas County Board of Equalization

Background

1. The Subject Property is an unimproved commercial parcel, with a legal description of: Whispering Ridge Rep 8* Lot 4 Block 0, Irreg .553 AC, Omaha, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$213,700 for tax year 2016.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$108,396 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$260,200 for tax year 2016.
5. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$220,600 for tax year 2017.
6. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$108,396 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$220,600 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on January 31, 2018, at Omaha State Office Building, 1313 Farnam , Third Floor, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Timothy M. Kerrigan was present at the hearing for Springfield Business Park LLC (Taxpayer).
11. Keith Nielsen, of the Douglas County Assessor/Register of Deeds Office (County Appraiser) was present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer asserted that the Subject Property was not assessed at the same per square foot value as an alleged comparable vacant commercial property two lots away from the Subject Property.
20. The Taxpayer did not present the Property Record File (PRF) for the lot located near the Subject Property demonstrating the 2016 or 2017 assessed value for the alleged comparable property as determined by the County. The information that was presented to the Commission indicates differing possible assessed values for the alleged comparable property and does not demonstrate the basis for the assessment applied to the alleged

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

comparable property (i.e. size, easements, etc) for the Commission to use to analyze the assessed values.

21. The Taxpayer alleged that the valuation of the Subject Property should be discounted due to its size and its hidden location within the development.
22. The Taxpayer did not present information to quantify the impact of the Subject Property's size and its lack of visibility from major roadways on its value.
23. The Taxpayer alleged that the assessed value of the Subject Property was negatively impacted by use restrictions agreements.
24. The evidence presented indicates that use restrictions are due to an agreement between the Taxpayer and an adjacent land owner but that they are not recorded with the register of deeds as an easement on the Subject Property or any other public records.
25. The Taxpayer alleged that the listing price of the Subject Property was improperly being considered by the County when setting assessed values.
26. The Taxpayer indicated that the listing price of the Subject Property has to be set at least \$14 per square foot due to an agreement between the Taxpayer and an adjacent property owner from whom the Subject Property was purchased, but that the property could be sold for less than that price.
27. The County Appraiser indicated that for tax years 2016 and 2017 the Subject Property was assessed using a discounted cash flow analysis. The County Appraiser further indicated that all unimproved commercial properties in Douglas County were assessed using a discounted cash flow analysis.
28. The County Appraiser indicated that the discounted cash flow analysis for 2016 and 2017 utilized information regarding vacant commercial land sales and market information and discounted for location, size, easements, etc. The County presented information regarding these models with the PRF for the Subject Property for tax years 2016 and 2017.⁹
29. The County Appraiser indicated that based on the discounted cash flow analysis discussed above his opinion of value for the Subject Property would be \$213,700 for tax year 2016 and \$220,600 for tax year 2017.
30. The record of the County Board proceedings presented to the Commission indicated that the County Board increased the assessed value of the Subject Property for tax year 2016 to the prior years assessed value because an appeal of that value from the prior year was still pending.
31. For tax year 2016 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.

⁹ The County Appraiser indicated that the models were similar for tax years 2016 and 2017 but that the sales and market information changed from year to year resulting in different values for each tax year.

32. For tax year 2016 the Taxpayer has 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 vacated.
33. For tax year 2017 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.
34. For tax year 2017 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.

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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

<u>Land</u>	\$213,700
Total	\$213,700

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is Affirmed.
4. The taxable value of the Subject Property for tax year 2017 is:

<u>Land</u>	\$220,600
Total	\$220,600

5. 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 (2016 Cum. Supp.).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2016 and 2017.
9. This Decision and Order is effective on April 25, 2018.

Signed and Sealed: April 25, 2018

Steven A. Keetle, Commissioner