

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Keith Edquist,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16C 0405

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

Background

1. The Subject Property is a commercial parcel improved with a 2,118 square foot storage warehouse, with a legal description of: Florence Lot 8 Block 43 W 78 Ft Lt 8 66 X 78, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$76,000 for tax year 2016.
3. Keith Edquist (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$53,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$76,000 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 July 26, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John K. Green, Attorney, and Keith Edquist were present at the hearing.
8. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, and Keith Nielsen, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser), were present for the County Board.

Applicable Law

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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the increase in assessed value from the prior assessment year was too great.
17. The Nebraska Supreme Court has held that assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
18. The improvements on the Subject Property are attached to the improvements on an adjacent parcel of property. The Taxpayer acquired both the Subject Property and the attached property in separate transactions in June 2015, each as a transfer from an LLC to its member. The Real Estate Transfer Statement listed a value of \$50,000 for the Subject Property and a purchase price of \$0.00.

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* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

19. The Taxpayer stated that his opinion of value for the Subject Property as of the assessment date was \$60,000 for the real property located on the Subject Property.
20. An owner who is familiar with his property and knows its worth is permitted to testify as to its value.¹¹ However, the Nebraska Supreme Court has held that even an expert's unsupported opinion of value is not competent evidence of the actual value of real property.¹²
21. The Taxpayer alleged that a paint booth located inside the Subject Property reduced the useable, rentable square footage of the Subject Property. The Taxpayer did not present evidence to show when the paint booth was placed in the property or the amount the usable square footage was reduced by the paint booth.
22. The Taxpayer sold the Subject Property together with the attached property and personal property to the same LLC that transferred the property to him in 2015 in June of 2019. The Real Estate Transfer Statement did not list values for the real property but indicted a purchase price of \$147,500, \$25,000 of that purchase price attributed to non-real property included in the transaction. The Taxpayer stated that he is no longer a member of the LLC that transferred the property to him in 2015.
23. The Property Record File (PRF) of the property that is attached to the Subject Property was not presented to allow the Commission to review its characteristics, determine how it was assessed, or allocate its value to the transaction(s).
24. The County Board presented the PRF for the Subject Property as well as a table regarding all of the qualified sales that occurred in the economic area of the Subject Property.
25. The County Appraiser stated that the County did not rely on either the sale or transfer of the Subject Property when determining the assessed value for tax year 2016.
26. The County Appraiser stated that the County utilized market information regarding income and expenses for similar commercial properties in Douglas County to value the Subject Property using the income approach to value.
27. The Taxpayer alleged that the expense rate utilized by the County was too low as the Subject Property had higher expenses due to its age and use, but he did not present information regarding the income or expenses for the Subject Property to indicate a higher expense ratio than that used by the county would be appropriate.
28. 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.
29. 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.

¹¹ *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

¹² See *McArthur v. Pappio-Missouri River Natural Resources District*, 250 Neb. 96, 547 N.W.2d 716 (1996).

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 | \$10,000 |
| <u>Improvements</u> | <u>\$66,000</u> |
| Total | \$76,000 |

3. 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 (Reissue 2018).
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 July 10, 2020.

Signed and Sealed: July 10, 2020

Steven A. Keetle, Commissioner