

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

JLCA Inc.,
Appellant,

v.

Boone County Board of Equalization,
Appellee.

Case No: 16R 0061

Decision and Order Affirming the Decision
of the Boone County Board of Equalization

Background

1. The Subject Property is a 2,453 square foot rural residence located on leased land. The legal description of the Subject Property is found in the Case File.
2. The Boone County Assessor (the County Assessor) assessed the Subject Property at \$280,935 for tax year 2016.
3. JLCA Inc. (the Taxpayer), protested this value to the Boone County Board of Equalization (the County Board) and requested an assessed value of \$110,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$280,935 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 December 3, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Gerald Carder, President of JLCA, Inc., was present at the hearing on behalf of the Taxpayer.
8. Present at the hearing on behalf of the County Board were Alan Rasmussen, County Commissioner, and Mikki Mangus, Deputy County Assessor. Also present was Darrel Stanard, an appraiser for the County Assessor.

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 2009).

² 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

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 Subject Property consists of a residential improvement located on leased land. The residence is owned by JLCA Inc., and the land, a 320 acre parcel, is owned by Carder Properties, LLC. Gerald Carder is an officer of JLCA Inc. and a member of Carder Properties, LLC. This appeal involves only the residential improvement.
17. The Subject Property was assessed at \$128,395 in 2002 and for every year until tax year 2016.⁹
18. The Subject Property was inspected by the County Assessor on July 18, 2016.
19. Gerald Carder gave no opinion of the market value of the residential improvement, nor did he put forth any evidence that the improvement was overassessed.
20. Mr. Carder asserted that because the Subject Property was situated on a 320 acre parcel the residence could not be sold. He offered no persuasive evidence to support this

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. 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) (2016 Cum. Supp.).

⁹ In other words, the Subject Property had no increase in its assessment for 13 consecutive years.

assertion or to support a conclusion that the residence would have less value because of where it was situated.

21. Mr. Carder offered information regarding sales of vacant land from 2016 to 2018, all of which were subsequent to the effective date of the valuation of the Subject Property. The Commission gives these lands sales little weight as indicators of market value of the Subject Property for tax year 2016.
22. Mr. Carder asserted that a disproportionate amount of the value of the 320 acre parcel was applied to the value of the Subject Property, but no persuasive evidence was offered to support this assertion.
23. Mikki Mangus, Deputy County Assessor, informed the Commission that rural residential land was assessed uniformly throughout the county. From parcel to parcel, the first acre was assessed at the same amounts, and all excess acres were assessed at the same amounts.
24. Competent evidence was not adduced proving that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. Clear and convincing evidence has not been adduced proving 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 affirmed.
2. The taxable value of the Subject Property for tax year 2016 is \$280,935.
3. This Decision and Order, if no further action is taken, shall be certified to the Boone County Treasurer and the Boone 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 December 12, 2018.

Signed and Sealed: December 12, 2018

Robert W. Hotz, Commissioner