

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Schmick's Market,
Appellant,

v.

Red Willow County Board of Equalization,
Appellee.

Case No: 17C 0057

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a commercial building containing a grocery store, with a legal description of: Westview Plaza Subdivision McCook Blk 2.
2. The Red Willow County Assessor (the County Assessor) assessed the Subject Property at \$1,195,000 for tax year 2017.
3. The Taxpayer protested this value to the Red Willow County Board of Equalization (the County Board) and requested an assessed value of \$600,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$944,825 for tax year 2017.
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 September 18, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Cody Schmick was present at the hearing for the Taxpayer.
8. Philip P. Lyons, Deputy County Attorney, was 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
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

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 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).

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 stated a 34% increase in value to the Subject Property was in excess of market value.
17. The Taxpayer offered five comparable properties in addition to the six comparable properties offered at the protest hearing. The Taxpayer also offered a listing of a Sun Mart in Holdredge, Nebraska, since sales of grocery stores in more rural areas are limited. Except the Holdredge listing, all the comparable sales were from Red Willow County. The Taxpayer felt using sales from Red Willow County and McCook in particular, was important to reflect what the local market will pay for large commercial buildings. Although dates of the comparable sales range from 2003 to 2017, the market for larger square footage buildings seems to be steady.
18. The Taxpayer asserted the price per square foot of the sales of larger square footage commercial buildings is much lower than the current assessment. The price per square foot of all the Taxpayers comparables is determined by dividing the sale price by the square foot. The value the land contributes to the comparables is unclear as listing sheets were provided instead of property record files for some of the properties; however, the comparable sales do indicate a lower price per square foot. The Commission found the

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.).

median sales price of the JC Penny, Alco, O Reilly and D&S properties to be \$17.69 per square foot.

19. The Taxpayer feels \$16 per square foot would better reflect the market value of the Subject Property. It appears the Taxpayer was using incorrect building square footage for the Subject Property, stating he thought the building was under 30,000 square feet when the property record card shows the square footage as 35,504 square feet. The Taxpayer admitted he may have subtracted the square footage of the pharmacy and ultimately agreed with the Counties square footage figure.
20. The County offered three sales as comparable properties. One of the sales was also used by the Taxpayer; however, two of the sales were from different areas of Nebraska. One sale was from Ogallala and the other sale was from Nebraska City. Nebraska City is 266 miles east of McCook and Ogallala is 35 miles away.⁹ Both of these locations would be considered superior to McCook and would likely have a different market for large commercial properties. The Commission did not give much weight to the sales from Nebraska City or Ogallala in determining the actual value of the Subject Property.
21. The County also provided an income approach for the Subject Property. The value from the income approach was used by the County Board to reduce the 2017 value. Although an income approach is one of the professionally accepted mass appraisal methods used in valuation,¹⁰ the Commission finds the sales approach to be more persuasive for this appeal and utilized the median price per square foot of the four most recent sales provided by the Taxpayer.
22. 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.
23. 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.

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 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$125,671
<u>Improvements</u>	<u>\$502,395</u>
Total	\$628,066

⁹ The Commission takes notice of this judicially cognizable fact. See Neb. Rev. Stat. §77-5016(6).

¹⁰ See Neb. Rev. Stat. §77-112.

3. This Decision and Order, if no further action is taken, shall be certified to the Red Willow County Treasurer and the Red Willow 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 2017.
7. This Decision and Order is effective on September 26, 2018.

Signed and Sealed: September 26, 2018

James D. Kuhn, Commissioner