

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Creative Lodging Associates, LLC,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 17C 0137

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a motel, with a legal description of: Lot A, Sub lot 3, 5th & 27th Sub.
2. The Scotts Bluff County Assessor (the County Assessor) assessed the Subject Property at \$649,868 for tax year 2017.
3. Creative Lodging Associates, LLC (the Taxpayer) protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$577,065 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$649,868 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 4, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Terry L. Jessen was present at the hearing for the Taxpayer.
8. Amy Ramos, Scotts Bluff County Assessor (the Assessor), and Darrel Stanard (the 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 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).

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 stated numerous issues with the Subject Property that he feels should result in a lower assessment value. He stated, for example, that the Subject Property is in need of many repairs, the second floor is not currently usable, the pool is not functional, the parking lot cannot be used by truck drivers due to lack of parking area, and location in a lower traffic area.
17. The Taxpayer stated the Wen/Tao hotel was a close comparable property and asserted its value was lowered by the County Board due to condition. Once the Taxpayer realized the Wen/Tao property received a lower value, the Taxpayer asserted his valuation should not exceed \$287,859, which is lower than his requested value on his valuation appeal.⁹
18. The Taxpayer sold the Subject Property for \$500,000 in 2014. One payment of \$100,000 was made and approximately one year of payments were received before the buyer defaulted on the agreement to purchase. The Taxpayer resumed control of the Subject Property after the default.

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 Taxpayers may request reductions in valuation to amounts less than originally stated in protests filed before a county board of equalization. See *Chief Industries, Inc. v Hamilton Cty. Bd. of Equal.*, 228 Neb. 275, 422 N.W.2d 324 (1988).

19. The Taxpayer stated the property has not been inspected by the Assessor or Appraiser. The Commission gave the parties twenty-four days to arrange and conduct an inspection of the Subject Property and see if an agreement could be reached. The inspection was completed but no agreement was reached.
20. At the hearing, the Assessor stated the inability to do an inspection of the property resulted in a recommendation of no change. However, after gaining access to the Subject Property, the Assessor and the Appraiser recommended a lower assessment value of \$509,228. The Appraiser stated in a letter to the Commission dated September 19, 2018, after re-measuring the Subject Property, the total square footage was corrected from 21,543 to 20,703. Adjustments were also made to physical depreciation to account for five units that are not rentable and the condition of several other units as well as the pool area.
21. The Assessor stated the commercial property in Scotts Bluff County was revalued for 2017 and the land values are equalized with other similar commercial properties. The Assessor feels the location of the Subject Property is just as good of a location as the Taxpayer's comparable property.
22. The Appraiser's re-evaluation of the Subject Property constitutes 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 Appraiser's re-evaluation of the Subject Property constitutes 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 and reversed.

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	\$178,133
<u>Improvements</u>	<u>\$331,095</u>
Total	\$509,228

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 October 3, 2018.

Signed and Sealed: October 3, 2018

James D. Kuhn, Commissioner