

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

KCA Enterprises LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17C 0298

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 10,272 square foot reinforced concrete building, with a legal description of: Waterloo Business Park Comm Condo Lot 2503 Block 0 1/17% -Excess Redevelopment Proj Value, Waterloo, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$711,900 for tax year 2017.
3. KCA Enterprises LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$630,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$711,900 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 March 11, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha Nebraska, before Commissioner Steven Keetle.
7. Kirk L. Anderson was present at the hearing for the Taxpayer.
8. Keith Nielsen, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser) 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

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

² See, 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 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 Subject Property is a 10,272 square foot indoor shooting range with retail space, a breakroom, and an office on the second floor which was completed in 2016. The County Board presented the Property Record File (PRF) for the Subject Property.
17. The Taxpayer alleged that the Subject Property is overvalued as compared to other indoor shooting ranges, and that the assessed value does not take into account the specialized construction of the Subject Property.
18. The Taxpayer discussed some of the specialized construction that went into the Subject Property, such as eleven-inch-thick concrete walls for the portion of the building used for shooting. The Taxpayer alleged that these additional construction costs added no value to the Subject Property for another user and argued that they would actually make the Subject Property harder to convert to a different use. The Taxpayer did not provide any information regarding the actual costs of construction of the Subject Property’s specialized features or present any information that would allow the Commission to quantify the impact of these specialized features on the value of the Subject Property.

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).

19. The Taxpayer argues that the value of the Subject Property should be determined using an appraisal report for the Subject Property that was prepared in October of 2014, prior to the actual completion of the improvements on the Subject Property in 2016. This appraisal and a letter relating the appraisal of an uncompleted building to the value of the Subject Property as completed were not provided for the Commission to evaluate and therefore the Commission is not able to give the appraisal report any weight.
20. The County Appraiser stated that the value of the Subject Property was determined based on a commercial cost detail using the cost approach to value and based on a storage warehouse model. The County Appraiser stated that the Subject Property's value is equalized with the assessed values of other storage warehouse properties in the county and presented PRFs of other storage warehouses near the Subject Property to support his position.
21. The Taxpayer alleged that the Subject Property's 14 foot ceiling height and low exterior doors would limit its use as a storage warehouse, and that therefore the storage warehouse model was not appropriate for determining the value of the Subject Property.
22. The County Appraiser, after reviewing the information presented, indicated that based on its construction and other characteristics, the Subject Property was more like a mini storage property and mini storage properties would be a more appropriate comparison. However, no information regarding the Subject Property's value as a mini storage property was presented. Additionally, no PRF or specific information about any other mini storage property was presented; only a general discussion of the mini storage market in Douglas County was presented to the Commission.
23. The Taxpayer and the County Appraiser both agree that the valuation of indoor shooting ranges such as the Subject Property is difficult and the information presented in this appeal demonstrates the difficulty in determining the actual value or equalized value of the Subject Property.
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
25. Information was presented regarding a total of four indoor shooting ranges, which included the Subject Property. Three of these indoor shooting ranges, including the Subject Property, are single tenant buildings which opened in 2016 and are located in Douglas County. The fourth indoor shooting range is situated in a multi-tenant building located in Sarpy County and was built in 2001.
26. The PRF for the Sarpy County property indicated that it has three bays, only one of which is occupied by an indoor shooting range, and has 26 foot high ceilings. The Commission finds and determines that the Sarpy County property is not comparable to the Subject Property.
27. One of the indoor shooting ranges located in Douglas County is a converted movie theater. The PRF for this property was not presented and without the details contained in

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of this to determine if it is comparable to the Subject Property.¹⁰ The information that was presented, however, shows that the property was built in 1967 and remodeled into its current use in 2017. It is much larger than the Subject Property, containing significant excess space or open space, additional retail space, and space used for the sale and consumption of food. The Commission finds and determines that the converted movie theater property is not comparable to the Subject Property.

28. The two remaining shooting ranges are the Subject Property and a shooting range located in northwest Omaha (Inner 10). The Subject Property is almost twice as large as the Inner 10 property. The information presented demonstrates that the assessed values of these two properties were not determined by the county in the same way.
29. The value of the land component of the Subject Property and the Inner 10 property are significantly different. The Inner 10 property's 0.4263 acres have an assessed value of \$92,900 while the Subject Property has a little over 1.51 acres with an assessed value of \$27,200. This difference in land values was determined through a land valuation study performed for the 2017 assessment year, and the difference in land values is due to the difference in the locations of the properties and is supported by the information presented.
30. The County Board provided the PRF for the Inner 10 property which contains a commercial income worksheet valuing the Inner 10 property using the income approach to value as well as a commercial cost detail. The commercial cost detail values the improvements on the Inner 10 property as a storage warehouse using the cost approach to value, but it is not complete and it was not used to determine the assessed value of the Inner 10 property. The assessed value of the Inner 10 property as determined by the County Assessor and County Board is based on the income approach to value.
31. As indicated earlier, the assessed value of the Subject Property was determined using the cost approach to value. If the assessed value of the Subject Property were determined using the income approach to valuation that was applied to the Inner 10 property, it would have a higher total assessed value than the value determined by the County Board. The land value would remain the same, but the Subject Property would also have a higher assessed value for the improvements than the value determined by the County Board. Because the County Board did not request an assessed value higher than the value determined by the County Assessor or County Board, the Commission will not consider a higher value for the Subject Property.¹¹

¹⁰ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

¹¹ See, Title 442 Neb. Admin. Code § 016.02A (6/11)

32. The Commission can only utilize the information presented to it at the hearing, and in this appeal information presented to the Commission does not demonstrate that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties.
33. 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. 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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 27,200
<u>Improvements</u>	<u>\$684,700</u>
Total	\$711,900

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 2017.
7. This Decision and Order is effective on March 6, 2020.

Signed and Sealed: March 6, 2020

Steven A. Keetle, Commissioner