

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rodriguez Pallets, Inc.,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case No: 18C 0216

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is commercial building, with a legal description of: Lots 5 & 12 21-29-9 Martin Subdivision 2 acres.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$280,560 for tax year 2018.
3. Rodriguez Pallets, Inc. (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$280,560 for tax year 2018.
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 11, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Adolfo Rodriguez was present at the hearing for the Taxpayer.
8. Jeff Curry, the Assessor, 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 sufficient competent evidence to justify its action."³ That presumption "remains until

¹ 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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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 he thought the new valuation was a mistake due to the increase of over \$180,000 in one year. Both land and improvements increased substantially from 2017 to 2018. The Taxpayer purchased the Subject Property in February of 2016 for \$160,000. The Taxpayer feels the Subject Property is not being equalized with similar properties.
17. The Taxpayer provided three comparable properties, all which have a lower price per square foot than the Subject Property. The price per square foot of the comparables ranges from \$20.21 to \$33.91 whereas the Subject Property is valued at \$61.04 per square foot. The property located at 517 West 9th Street is made up of storage warehouse, retail, and residential home; however, the assessed price per square foot of the storage warehouse was provided in the property record file. The Taxpayer stated the comparable property at 1010 9th Avenue is a very good comparable even though it is a better building with more concrete yet has a lower price per square foot. No evidence of land values were provided to the Commission.
18. The Assessor provided three sales as comparables that range in sale price per square foot from \$40.47 to \$65.00. When looking at the comparables provided by the Assessor, the property at 520 W 14th does not appear to be a comparable property; likewise, the property at 2371 9th Avenue has a large office area and about double the square footage

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. County 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).

of storage warehouse area. The Commission is not persuaded that either one of these properties is comparable to the Subject Property. The only comparable provided by the Assessor that the Commission considers comparable is the property located at 720 West 21st Street. This property is of similar make up but is about three times larger and in better condition than the Subject Property. The sale of this parcel in 2019 was not considered as this appeal is for the 2018 tax year.

19. The Commission arrayed the data of three comparable properties; 720 West 21st, 1010 9th Ave and 517 West 9th street. The median price per square foot of the improvements only was \$19.24. The Commission found these comparable properties to be the best evidence of value for the Subject Property. Method of valuation is $\$19.24 \times 4,596 \text{ (SF)} = \$88,430$ (improvement, rounded) + \$105,400 (land) = \$193,830.
20. 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.
21. 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 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

| | |
|---------------------|------------------|
| Land | \$105,400 |
| <u>Improvements</u> | <u>\$ 88,430</u> |
| Total | \$193,830 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 2018.
7. This Decision and Order is effective on August 15, 2019.

Signed and Sealed: August 15, 2019

James D. Kuhn, Commissioner