

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Belamini Properties, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18C 0507 & 19C 0518

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is multi residence commercial property, with a legal description of: Kountze & Ruths Add Lot 4 Block 4 E 1/2 LT 4 BLK 4 50 X 80.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$547,900 for tax years 2018 and 2019.
3. Belamini Properties LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested lower assessments for tax years 2018 and 2019.
4. The County Board determined that the taxable value of the Subject Property was \$547,900 for tax years 2018 and 2019.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 4, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Michael J. Walz was present at the hearing for the Taxpayer.
8. Stan Mlotek (the 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 a 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 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).

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 the Subject Property has received large assessment increases each year since 2016. The Taxpayer stated a location adjustment should be applied to the Subject Property as it is across the street from a correctional facility. The Taxpayer asserted he has a high turnover rate in tenants due to constant heckling from residents of the correctional facility. The Taxpayer described the location of the Subject Property as “good, yet bad at the same time.”
17. The Taxpayer stated there are ten one-bedroom apartments in the Subject Property that range from \$750 to \$1,000 per month to rent depending on whether the contract is all inclusive.
18. The Appraiser stated the Subject Property was remodeled in 2010 which changed its condition to “Good” after an inspection. The Appraiser stated he does not have any evidence from the market to support a location adjustment. The Appraiser stated the neighborhood is “up and coming” and the Subject Property is walkable to the downtown amenities. The Appraiser asserted the Subject Property is being valued using the same valuation model that all the apartments in the Central Business District (CBD) are.

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

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).

19. The Taxpayer did not provide the Commission with any evidence to support the assertion that the location of the Subject Property should be a reason to lower the assessment. The Taxpayer was unable to quantify the effect on market value of being near a correctional facility.
20. 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.
21. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 and 2019 is: **\$547,900.**
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 years 2018 and 2019.
7. This Decision and Order is effective on February 17, 2021.

Signed and Sealed: February 17, 2021

James D. Kuhn, Commissioner