

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Douglas and Carol Stephens,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18C 0420

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a commercial parcel improved with three commercial mini warehouses and one storage warehouse, with a legal description of: Bennington Warehouse Lots Add Lot 5 Block 0 NE 70 FT Abandoned RR Rwy Adj on SW & SE 13 FT Lot 3 & all Lots 4 & 5 BLK 12
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$719,200 for tax year 2018.
3. Douglas L. Stephens (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$378,600 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$645,500 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 February 3, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Douglas L. Stephens was present at the hearing.
8. Keith Nielsen (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 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 Taxpayer contends the increase of assessed value from tax year 2017 is excessive and does not believe the value of the Subject Property has increased to that extent. The Taxpayer does not believe he could sell the Subject Property for its assessed value. The Taxpayer stated he should not be compared to the larger storage unit companies that have 300 or more mini storage units; he asserted that his property is just a mom and pop type small business that is being forced out by the larger companies.
17. The Subject Property is comprised of approximately 70 storage units, more than half of which are climate controlled, and a number of outdoor storage units.⁹ There is also a 4,000 square foot storage warehouse that was previously used as a mechanic shop but is now used for personal storage for the Taxpayer. The Taxpayer stated he would like to convert the storage warehouse into indoor mini warehouse units but with the increase in taxes he cannot afford to make that conversion at this time. The Taxpayer did provide an appraisal; however, the appraisal was done as of November 15, 2013 and would have no

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).

⁹ The appraisal, income breakdown, and a written statement, all submitted by the Taxpayer, contain different totals and breakdowns of the number and type of storage units.

bearing as to the 2018 value of the Subject Property considering the change in the mini storage unit market since 2013 (see below).

18. The County Appraiser (the Appraiser) stated he did a reappraisal of all storage units in Douglas County in 2016 and again in 2018 due to the “hot” market for storage units. The Appraiser did a personal inspection of the Subject Property and talked with the Taxpayer in 2018. The Appraiser stated the income information of the Subject Property provided by the Taxpayer indicates that the actual income and expenses of the Subject Property are better than the typical market income and expenses his model uses for valuing mini storage warehouses.
19. The Taxpayer has not provided evidence of any comparable properties showing the Subject Property is being treated differently than other similar types of properties. The Taxpayer has not provided evidence of comparable sales showing the Subject Property is being valued in excess of its market value.
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 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 77,600
<u>Improvements</u>	<u>\$567,900</u>
Total	\$645,500

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 2018.
7. This Decision and Order is effective on February 7, 2020.

Signed and Sealed: February 7, 2020

James D. Kuhn, Commissioner