

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Michael L. Bonner,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18C 0466

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a commercial building, with a legal description of: Pacific Plaza Replat Lot 3 Block 0 S100' W75' Lot 3.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$67,200 for tax year 2018.
3. Michael Bonner (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$67,200 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 August 14, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Michael L. Bonner was present at the hearing.
8. Keith Nielsen, 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 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 contends the Subject Property should not be valued the same as more conventional and larger mini storage warehouses. The Subject Property consists of ten total spaces of which nine units are rented by the month. One of the units is used by the Taxpayer for storage, which was the original reason for purchasing the property. Clients are mostly nearby businesses located in the strip mall due to the close proximity to the Subject Property.
17. The Taxpayer stated the Subject Property is in need of siding, concrete and possibly a new roof; the Taxpayer feels the quality and condition ratings of the Subject Property should be lower than the Average/Average placed on it by the Assessor’s office. The lack of fence, security and no coded entry are a few more reasons the Taxpayer feels the value is in excess of market value.
18. The Appraiser stated he has been to the Subject Property and reviewed the sale of the property to the Taxpayer in October 2015. The Appraiser stated the sale price of \$100,000 was not considered a “good sale” because he felt the buyer was not knowledgeable of commercial values, so he did not use the sale in the office sales file. The Appraiser previously spoke to the Taxpayer, received information on the rents and expenses and used that information to develop an income approach value for the Subject Property which supported the current assessment.

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 any property record cards of similar properties showing the Subject Property is being valued differently than similar properties and did not provide any proof that the actual use of the Subject Property is different than a mini storage warehouse as being valued by the Assessor.
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:

Total \$67,200

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 August 16, 2019.

Signed and Sealed: August 16, 2019

James D. Kuhn, Commissioner