

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Main Street Properties LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19C 0310

Decision and Order Affirming the Decision
of the Sarpy County Board of Equalization

For the Appellant:

Main Street Properties LLC,
Patrick Shannon, Member

For the Appellee:

Andrea Gosnold-Parker,
Deputy Sarpy County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 3,200 square foot multi-tenant commercial center located at 1501 Galvin Road, Bellevue, Sarpy County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 7.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined that the assessed value of the Subject Property was \$280,900 for tax year 2019.¹ Main Street Properties LLC (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$141,500.² The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$168,600.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 23, 2021, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits, and a Pre-

¹ Exhibits 2, 6:6, 6:11.

² Exhibit 6:2.

³ Exhibits 2, 6:1.

Hearing Conference Report was submitted as ordered by the Commission. At the hearing, exhibits 1-25 and 28-42 were received in evidence.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.⁴ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the County Board's valuation was unreasonable or arbitrary.¹⁰

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may

⁴ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

⁵ *Brenner* at 283, 811 (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹¹ The Commission may also take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹² The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION

A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁴

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹⁵ Actual value, market value, and fair market value mean exactly the same thing.¹⁶ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

“Destroyed real property means real property that suffers significant property damage as a result of a calamity occurring on or after January 1, 2019, and before July 1 of the current

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Omaha Country Club* at 180, 829 (2002).

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-1301(1) (Supp. 2020).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

assessment year.”²⁰ “If real property becomes destroyed real property during the current assessment year, the property owner shall file a report of the destroyed real property with the county assessor and county clerk of the county in which the property is located on or before July 15 of the current assessment year.”²¹ “The report of destroyed real property shall be made on a form prescribed by the Tax Commissioner.”²² “The county board of equalization shall consider any report of destroyed real property received pursuant to this section, and the assessment of such property shall be made by the county board of equalization After county board of equalization action . . . the county assessor shall correct the current year's assessment roll”²³ “The county board of equalization shall give notice of the assessed value of the destroyed real property to the record owner or agent at his or her last-known address. Protests of the assessed value proposed for destroyed real property . . . shall be filed with the county board of equalization within thirty days after the mailing of the notice.”²⁴

B. Facts & Analysis

The initial assessment of the Subject Property classified the property as a Day Care facility.²⁵ After the Taxpayer protested the assessment, the County Assessor changed the classification to Multi-tenant, resulting in a recommendation at the time of the protest hearing reducing the assessed value to \$168,600.²⁶ The assessment of the Subject Property was made by using an income approach.²⁷

The Taxpayer asserted that the assessment should have accounted for water damage done to the Subject Property both before and after January 1, 2019. Patrick Shannon testified that the drain water from a neighboring swimming pool had caused damage to the improvement on the Subject Property before January 1, 2021. He also testified that widespread flooding beginning sometime in March 2019 had caused additional damage to the improvement on the Subject Property.

²⁰ Neb. Rev. Stat. § 77-1307(2)(b) (Supp. 2020).

²¹ Neb. Rev. Stat. § 77-1308(1) (Supp. 2020).

²² *Id.*

²³ Neb. Rev. Stat. § 77-1308(3) (Supp. 2020).

²⁴ Neb. Rev. Stat. § 77-1309(3) (Supp. 2020).

²⁵ Exhibit 6:6.

²⁶ Exhibit 7:2.

²⁷ Exhibit 7:5.

The effective date for tax year 2019 assessments is January 1, 2019.²⁸ The Taxpayer asserted that the actual value of the Subject Property should have been reduced because of the flood damage during calendar year 2019. There is no evidence in the record that the Taxpayer filed a report of destroyed real property for the Subject Property for tax year 2019.

Timothy Ederer, a Senior Commercial Appraiser with the County Assessor, testified that both the classification change from Day Care to multi-tenant and an adjustment for the damage caused by drainage water from the swimming pool were both included in the recommended value of \$168,600 that the County Board adopted. Ederer testified that the March 2019 flood damage was not considered because it occurred after the January 1, 2019, effective date. Ederer gave his opinion of value as \$168,600.²⁹

The Taxpayer offered Exhibits 36 and 37. These exhibits documented the resulting damage of the flooding. However, because the Taxpayer did not file a report of destroyed real property,³⁰ the County Board did not make an assessment of that damage. Therefore, no protest could be made of such an assessment, and no appeal of such a protest was filed with the Commission.

No other evidence was offered to persuade the Commission that the County Board determination was arbitrary or unreasonable.

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all the reasons set forth above, the decision of the County Board should be affirmed.

²⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁹ Exhibit 5.

³⁰ See Neb. Rev. Stat. § 77-1308(1) (Supp. 2020) (“[T]he property owner shall file a report . . . made on a form prescribed by the Tax Commissioner.”).

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is \$168,600.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2019.
7. This Decision and Order is effective for purposes of appeal on June 30, 2021.³¹

Signed and Sealed: June 30, 2021

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³¹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.