

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Schurman Corporation,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19C 0365

Decision and Order Affirming the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a commercial parcel improved with a 6,095 square foot, 8 unit apartment building, with a legal description of: Waterloo Flats* Lot 2 Block 0 56x99, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$266,600 for tax year 2019.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$205,100 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$266,600 for tax year 2019.
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 September 16, 2020, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Sheila J. Schurman Hall was present at the hearing for Schurman Corporation (Taxpayer).
8. Mark D. Jenkins with the Douglas County Assessor/Register of Deeds Office (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 a 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 presented information regarding the actual rents charged for the Subject Property and alleged that the value of the Subject Property should be lower due to the actual rents collected.
17. The Taxpayer admitted that the rents charged for the Subject Property were lower than market rents as some of the units in the Subject Property were rented to employees of related businesses.
18. The Taxpayer alleged that the assessed value of the Subject Property should be lower than the assessed value of another multi-unit apartment building also located in Waterloo, Nebraska (Cedar Hollow Property) due to the differences in amenities offered at each property.
19. The Taxpayer did not offer any information to quantify the impact of the amenities discussed, such as a children’s playset on site, on-site management, availability of storage space for rent, etc., on the assessed value of the properties, extra rent that could be charged, or expenses incurred.

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).

20. At the hearing the Taxpayer requested a valuation of \$205,100, but did not provide a basis for this requested valuation.
21. The County Board presented the Property Record File (PRF) for the Subject Property which contains the methodology used by the County Assessor to determine the assessed value of the Subject Property. The County Board presented the PRF for the Cedar Hollow Property and another multi-unit apartment building located in western Douglas County (the CMW Property). The County Board also presented recent valid sales information for multi-unit apartment buildings throughout Douglas County.
22. The County Appraiser stated that multi-unit apartment buildings in Douglas County were assessed using the income approach to valuation. Multi-unit apartment buildings were assessed using gross built as square footage for each of the buildings on each parcel, assessments were not based on the number of units. The County Appraiser stated that the total assessed values were determined based on the gross square footage of the buildings on each property and that land was simply allocated at \$1 per square foot for the three properties discussed at the hearing.
23. The PRFs indicate that the Subject Property, the Cedar Hollow Property, and the CMW property were all assessed using the same income model, which utilized the same rental rates, vacancy and collection loss, expenses, and capitalization rate. The County Appraiser stated that the factors utilized in the income model were based on actual income and expense data collected from the Douglas County.
24. The Subject Property, the Cedar Hollow Property, and the CMW property were assessed at the same dollar amount per square foot of gross built as square footage.
25. 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.
26. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 6,700
<u>Improvements</u>	<u>\$259,900</u>
Total	\$266,600

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 2019.
7. This Decision and Order is effective on September 24, 2021.

Signed and Sealed: September 24, 2021

Steven A. Keetle, Commissioner