

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Service Express Company,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19C 0404

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
DOUGLAS COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is a commercial parcel improved with a 9,408 square foot industrial flex mall building with a legal description of Cornhusker Industrial Prk Lot 4 Block 3 E 51.5 Ft Lot 3 & W 80 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$419,800 for tax year 2019.
3. Service Express Company (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$419,800 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 July 30, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joseph L. Cunningham was present at the hearing for the Taxpayer.
8. Keith Neilson, Real Estate Specialist 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 Subject Property is an industrial flex mall building that can be and is divided into separate tenant bays. During the tax year in question the Taxpayer occupied 40% of the Subject Property and the remaining 60% was occupied by two tenants.⁹
17. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.
18. The valuation history for the Subject Property and the other properties offered indicates that only the Subject Property received a reduction in assessed value in the prior tax years from the value set by the County Assessor.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹¹ Additionally, the differences in the changes of the Subject

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 This was also the case for tax years 2018 and 2017.

¹⁰ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944) *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

Property and other properties in the neighborhood is only relevant to the current year's assessment if the differences resulted in values that were not equalized for the current assessment year.

20. The Taxpayer alleged that the assessed value of the Subject Property is higher than market value.
21. The Taxpayer presented the actual income and expense information for the Subject Property for the tax year at issue and the two prior tax years and, using a 10% vacancy and collection loss rate and an 8% capitalization rate, calculated that the value of the Subject Property was between \$369,000¹² and \$378,000.¹³
22. The Taxpayer did not provide any income or expense data for comparable properties or verify that the figures for the Subject Property were typical for the market.
23. "Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis."¹⁴
24. The County Appraiser stated that the 8% capitalization rate used by the County Assessor's valuation model and the Taxpayer in the income approach to valuation is "loaded" to account for property tax. The County Appraiser stated that unloaded capitalization rate would be 6%.
25. The Taxpayer's calculation therefore accounts for property tax twice, once as an itemized expense and again using a loaded capitalization rate.
26. Performing the calculation using the 2019 actual income and expense numbers provided by the Taxpayer, a 10% vacancy and collection loss rate, and an unloaded capitalization rate of 6% would result in a value of \$492,380. Performing the calculation using the 2019 actual income and expense numbers provided by the Taxpayer without including property tax, a 10% vacancy and collection loss rate, and a loaded capitalization rate of 8% to account for property tax would result in a value of \$473,263. Both of these values are higher than the assessed value determined by the County Board and the same would be true using the Taxpayer's actual income and expense numbers from either of the two years prior.¹⁵
27. The County Board presented the Property Record File (PRF) for the Subject Property as well as the PRFs for three recently sold properties that the County Board alleged were comparable to the Subject Property.

¹² Using the numbers available for 2019, rounded.

¹³ Using the numbers available for 2018, rounded.

¹⁴ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

¹⁵ The information presented for the prior tax years indicates that the County Board reduced the value of the Subject Property for tax years 2018 and 2017 using a calculation that improperly accounted for property tax twice. The Commission, however, does not have jurisdiction over the assessed value for any tax year in these proceedings other than 2019.

28. The PRFs indicate that the Subject Property is assessed at \$44.62 per square foot and the three recent sales were for \$65.11, \$65.54, and \$65.68 per square foot.
29. The Taxpayer has failed to demonstrate that the assessed value of the Subject Property is higher than market value.
30. The Taxpayer next alleges that the assessed value of the Subject Property is not equalized with other comparable properties.
31. The Taxpayer presented the PRF for nine parcels of property that he alleged demonstrated the dis-equalization of values of comparable properties. All of these properties were assessed using the income approach to value.
32. The County Board presented the PRF for three properties to demonstrate the equalization of values of properties comparable to the Subject Property. All of these properties were assessed using the income approach to value.
33. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁷
34. The County Appraiser stated that the County Assessor determined values for industrial flex mall buildings such as the Subject Property using an income valuation model as shown on the commercial income worksheet found in each PRF. The County Assessor's office determined that there were different categories of industrial flex mall buildings and that different rental rates and capitalization rate were applicable based on the size of the properties. Properties smaller than 10,000 square feet were one category of industrial flex building and properties between 10,001 and 50,000 square feet were in a different category using lower rental rates and a lower capitalization rate.
35. The Taxpayer alleged that size of an industrial flex mall building did not matter as much as the County Assessor's model indicated when determining value.
36. The only information presented by the Taxpayer regarding the impact of size was information regarding tenant rents in the Subject Property that show a lower per square foot rent being charged for the larger space.
37. 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.
38. 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.

¹⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁷ *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

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	\$ 67,300
<u>Improvements</u>	<u>\$352,500</u>
Total	\$419,800

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 April 9, 2021.

Signed and Sealed: April 9, 2021

Steven A. Keetle, Commissioner