

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Terry L. Jessen,
Appellant,

v.

Scotts Bluff County Board of Equalization,
Appellee.

Case No: 19C 0011

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a commercial parcel in Scotts Bluff County improved with a motel. The legal description of the parcel is LT A, SUB LT 3, 5TH & 27TH SUB S-T-R 24-22-55.
2. The Scotts Bluff County Assessor (the County Assessor) assessed the Subject Property at \$509,228 for tax year 2019.
3. The Taxpayer protested this value to the Scotts Bluff County Board of Equalization (the County Board) and requested an assessed value of \$200,570 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$470,000 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 27, 2020, at the Hampton Inn and Suites Hotel, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Terry L. Jessen was present at the hearing.
8. Jessica M. Laughlin (the County Attorney) was present for the County Board.

Applicable Law

9. “Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made[.] If the protest does not contain or have attached the statement of the reason or reasons for the protest or the applicable description of the property, the protest shall be dismissed by the county board of equalization. The protest shall also indicate whether the person signing the protest is an owner of the property or a person authorized to protest on behalf of the owner. If the person signing the protest is a person authorized to protest on behalf of the owner, such person shall provide the authorization with the protest. If the person signing the protest is not an owner of the property or a person authorized to protest on behalf of the owner, the

county clerk shall mail a copy of the protest to the owner of the property at the address to which the property tax statements are mailed.”¹

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.²
11. The Commission’s review of a determination of the County Board of Equalization is de novo.³
12. 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.”⁴ 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.”⁵
13. 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.⁶
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁹

Findings of Fact & Conclusions of Law

17. The protest form filed with the County Board contained the required reason for the protest and description of the property. However, the form was signed by another person

¹ Neb. Rev. Stat. § 77-1502(2) (Reissue 2018).

² Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

³ 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).

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

“for Terry Jessen.”¹⁰ The protest was not accompanied by authorization for the person who signed, to sign.

18. Because Jessen did not sign the protest, the County Board asserted that the Commission lacks the authority to hear the appeal.
19. In *Village at North Platte v. Lincoln County Board of Equalization*,¹¹ the Nebraska Supreme Court reviewed a case with similar facts. The Village filed a protest form that did not include the required reason for the protest. The Lincoln County Board dismissed the protest. The Village appealed to the Commission. The Commission dismissed the appeal, finding that it lacked jurisdiction to hear the appeal because the Lincoln County Board had lacked jurisdiction to hear the protest.
20. The Court observed, “Section 77-1502(2) both imposes a requirement and specifies a consequence for its violation.”¹² “Because the taxpayer’s protest failed to include a reason for the requested change in valuation, the statute mandated that the [Lincoln County] Board dismiss the protest. [...] Because the Board lacked authority to hear the taxpayer’s property valuation protest on the merits of the valuation, TERC likewise lacked authority to do so.”¹³
21. *Village at North Platte* is distinguishable from the present appeal in two respects. First, Neb. Rev. Stat. § 77-1502(2) requires a county board to dismiss a protest that does not include the reason for the protest, but it does not require the county board to dismiss a protest that lacks the written authorization of the owner. Second, the Lincoln County Board dismissed the Village’s protest, but the Scotts Bluff County Board did not dismiss the Taxpayer’s protest. Instead, it held a hearing and made a decision reducing the value of the Subject Property.
22. The Commission has the authority to hear this appeal.
23. The Taxpayer stated many issues in support of his request for a lower valuation for 2019. The Taxpayer does not think people want to stay in an older hotel with no elevator and no electronic signage and fading paint on the hotel’s current sign. The Taxpayer asserted the second floor of the hotel has not been used for the past two years due to lack of clientele as there are only three rooms rented per night on average.
24. The Taxpayer asserted the new bypass has taken a large volume of traffic away from his location, therefore decreasing the value of the Subject Property. The Taxpayer stated he has cancelled his insurance in an effort to keep expenses down with the lack of clients booking rooms.
25. The Taxpayer feels the Assessor should be using the income approach to value the Subject Property. Darrel Stanard (the Appraiser) stated the Taxpayer had not provided the necessary documentation needed to the Assessor for an income approach to be calculated.

¹⁰ The name of this individual is not clear from the document. The documents provided indicate that the Subject Property is owned by Creative Lodging Associates. The ownership of Creative Lodging was not discussed at the hearing, but the parties agreed that Jessen would have had the authority to sign the protest.

¹¹ 292 Neb. 533, 873 N.W.2d 201 (2016).

¹² 292 Neb. at 535.

¹³ 292 Neb. at 541.

26. The Taxpayer provided a comparable property located in Gering, Nebraska. Gering is a town in close proximity to Scotts Bluff. The Taxpayer stated the comparable property is a good comparable to the Subject Property and is being valued much less than the Subject Property. The Appraiser stated the comparable property is 6,000 square foot smaller, located in a less desirable location, and doesn't have the amenities close by like the Subject Property has. The Appraiser doesn't feel the comparable property is a good comparable.
27. The Appraiser stated the Taxpayer is making a management decision by not renting the rooms on the second floor as they all look to be ready for clients. The Appraiser stated he inspected the Subject Property prior to the hearing and saw three different units.
28. The Assessor stated the Subject Property is in a good location with nearby amenities for shopping and food. The Assessor asserted the comparable property provided by the Taxpayer is in a different town with a different market and would not be considered a good comparable. The Assessor did not agree with the County Board lowering the 2019 tax year value.
29. The Commission was not convinced the Subject Property is being over valued by evidence of one comparable or the fact that the County Board lowered the 2020 tax year valuation; each year stands on its own evidence and this hearing was for the 2019 tax year only. The Taxpayer did not provide evidence needed to grant a reduction in value.
30. 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.
31. 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	\$178,133
<u>Improvements</u>	<u>\$291,867</u>
Total	\$470,000

3. This Decision and Order, if no further action is taken, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 November 6, 2020.

Signed and Sealed: November 6, 2020

James D. Kuhn, Commissioner