

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John Galt Development LLC,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 19C 0022

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is a commercial property, with a legal description of: Country Place 10th Addition, Lot 3-6.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$516,800 for tax year 2019.
3. John Galt Development LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$300,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$516,800 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 October 13, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mark Becker was present at the hearing for the Taxpayer.
8. Bob Stanley (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 a 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 purchased the Subject Property on April 23, 2018, for \$300,000. The Taxpayer stated the purchase was an arm’s length purchase through a realtor that had been listed for approximately six months.
17. The Taxpayer listed a number of issues with the Subject Property that are not desirable functionally and are preventing the Taxpayer from maximizing its potential until they are corrected. The Taxpayer mentioned the previous owner had made changes to the interior of the Subject Property for their specialized purposes so the Subject Property cannot be used as a “normal” office space. Some of the issues listed were: Poor and dated finish, demising wall was moved, shell finish in portions of the space, a single bathroom that cannot be modified, and no reception area. The Taxpayer stated he had not done any remodeling for the 2019 assessment year. The Taxpayer stated there is approximately 1,000 square foot of unfinished cold storage with the balance being used as office space.
18. The Appraiser stated he has not inspected the property as of the time of the hearing. The Appraiser provided a spreadsheet with 24 sales in the Trade Center complex, some dating back to 2015. The Appraiser stated the sales are of finished suites and he could not think of any that were sold in the condition of the Subject Property. The Appraiser stated that the Subject Property is being rented for 60% of the current market rent in the Trade Center complex.

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 Commission is convinced the Subject Property's 2018 purchase price is the best evidence of 2019 market value of a property that is unique in the Trade Center complex.
20. The Taxpayer has 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 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 vacated.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$133,400
<u>Improvements</u>	<u>\$166,600</u>
Total	\$300,000

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 January 5, 2021.

Signed and Sealed: January 5, 2021

James D. Kuhn, Commissioner