

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

The Money Express, Inc.,
Appellant,

v.

Cheyenne County Board of Equalization,
Appellee.

Case No: 19R 0131

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a commercial apartment complex with a legal description of: Lot A Replat of the S/D of Block 15 Parkland Addition Sidney.
2. The Cheyenne County Assessor (the Assessor) assessed the Subject Property at \$658,298 for tax year 2019.
3. The Money Express Inc. (the Taxpayer) protested this value to the Cheyenne 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 \$653,443 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 Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Kuldip Singh was present at the hearing for the Taxpayer.
8. Paul Schaub (County Attorney), Mel Keller (the Assessor) and Darrel Stanard (the Appraiser) were 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 stated the Subject Property was originally built as low income housing although he does not have any rent restrictions now. The Taxpayer believes the land value is in excess of that of a comparable property. The Assessor explained that land values are tiered according to size, but all commercial properties are being valued by the same method. The Assessor stated that if the comparable property were the exact same land size as the Subject Property, they would have the same value.
17. The Taxpayer stated the value per unit is higher than that of two comparable properties. The property record files (PRF) provided by the Taxpayer show the two comparable properties being valued at \$41.19 and \$39.54 per square foot when the Subject Property is shown to have a per square foot value of \$34.73. The Appraiser stated the Subject Property is a 16 unit complex whereas the two comparable properties are much larger at 48 and 72 units and would not be considered good comparable properties.
18. The Appraiser stated they had not received any income statements for the Subject Property. The Assessor stated that one of the Taxpayer’s comparable properties was tax exempt and the other two were much larger properties. For these reasons, the Assessor did not think the properties offered by the Taxpayer were truly comparable to the Subject Property.

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 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.
20. 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: **\$653,443**.
3. This Decision and Order, if no further action is taken, shall be certified to the Cheyenne County Treasurer and the Cheyenne 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 February 19, 2021.

Signed and Sealed: February 19, 2021

James D. Kuhn, Commissioner