

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Hoppe Omega Development, LLC,
Appellant,

v.

Cuming County Board of Equalization,
Appellee.

Case Nos: 20C 0007 & 21C 0041

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

Background

1. The Subject Property consists of a commercial parcel with a legal description of Trinity Add, LT B WPC.
2. The Cuming County Assessor assessed the Subject Property at \$684,030 for tax year 2020 and \$244,345 for tax year 2021.
3. Hoppe Omega Development, LLC (the Taxpayer) protested these values to the Cuming County Board of Equalization (the County Board) and requested an assessed value of \$150,000 for tax years 2020 and 2021.
4. The County Board determined that the taxable value of the Subject Property was \$244,345 for tax years 2020 and 2021.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 6, 2021 at Divots Conference Center, 4200 West Norfolk Ave., Norfolk, Nebraska, before Commissioner James D. Kuhn.
7. Ward F. Hoppe was present at the hearing for the Taxpayer.
8. Cherie Kreikemeier (the Assessor) and Scott Buhrman (the County 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

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 stated he purchased the Subject Property in 2020 for \$150,000 and provided an appraisal by Lori Johnson (the Taxpayer’s Appraiser) with an opinion of value of \$150,000. The Taxpayer stated that the sale of the Subject Property was an arm’s length transaction even though it was a bank liquidation sale. The Taxpayer stated the purchase price was negotiated and that was what a willing buyer and seller agreed upon.
17. The Taxpayer stated the Subject Property was previously a nursing home; however, there is no longer a license to operate as a nursing home. The Taxpayer plans on renovating the Subject Property into affordable housing. The Taxpayer stated that without a license to operate as a nursing home, the value of the Subject Property is greatly decreased.
18. The County Appraiser stated the sale of the Subject Property was a bank foreclosure and was not an arm’s length transaction. The County Appraiser stated that marketing time and exposure time is important, but he was unsure if the property was listed on the open market.

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).

19. The County Appraiser stated that four of the comparable properties used by the Taxpayer's Appraiser were old schools and were not really comparable to a former nursing home. The County Appraiser stated the Taxpayer's Appraiser also used the Subject Property as a comparable, along with two other properties bought by the Taxpayer from the same seller on the same day. The County Appraiser did not feel that this was appropriate.
20. Among the sales comparables used in the appraisal, the first, second, and fourth lowest per square foot prices were former schools. The third and fifth lowest per square foot prices were the Subject Property and another property bought by the Taxpayer from the same seller on the same day.
21. The Taxpayer's Appraiser made no adjustments to any of the sale prices for the comparable properties used in its sales comparison approach.
22. "If all comparable properties are identical to the subject property, no adjustments to the sale prices will be required. However, this is rarely the case. After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any differences."⁹
23. Without making any adjustments, the Taxpayer's Appraiser determined that the mean per square foot value of the comparable properties was \$13.13. The median price for these comparable sales was \$10.62 per square foot.
24. The Taxpayer's Appraiser did not base her opinion of value on the median or mean square foot prices of the sales comparables. Instead, the Taxpayer's Appraiser gave "substantial consideration" to the sale of the Subject Property to the Taxpayer and determined that the "most probable selling price" for the Subject Property was \$8.50 per square foot or \$149,821, rounded to \$150,000.
25. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."¹⁰
26. The Taxpayer provided a spreadsheet listing only the eight sales of nursing homes from his appraisal. Using these sales, but not the other comparables listed in the appraisal, the Taxpayer arrived at a median price per square foot of \$13.78 and used that as a recommendation to the County Board (\$13.78 X 17,732), which they ultimately adopted as the new assessment of \$244,345 (rounded).
27. Normally, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹¹

⁹ Appraisal Institute, *The Appraisal of Real Estate*, at 388 (14th ed. 2013).

¹⁰ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹¹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

However, in this case the Commission finds that the Taxpayer's appraisal is not reliable because the Taxpayer's Appraiser did not make any adjustments to the sales prices of the comparables, the Taxpayer's Appraiser included multiple transactions between the same parties on the same day as comparables, at least one of which was a foreclosure sale, and the reconciliation of value gives excessive weight the sale of the Subject Property in March 2020.

28. 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.
29. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 and 2021 is: **\$244,345**
3. This Decision and Order, if no further action is taken, shall be certified to the Cuming County Treasurer and the Cuming 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 years 2020 and 2021.
7. This Decision and Order is effective on January 25, 2022.

Signed and Sealed: January 25, 2022

James D. Kuhn, Commissioner