

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

SAWTELLE ENTERPRISES
LLC,
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NO: 20C 0040

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved commercial suite operating as a medical office at 4525 S. 86th Street in Lincoln, Lancaster County, Nebraska. The Subject Property has the parcel number 16-11-114-008-002.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$794,200 for tax year 2020.
3. Sawtelle Enterprises LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined the taxable value of the Subject Property was \$794,200 for tax year 2020.
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 November 2, 2021, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Brad Sawtelle was present at the hearing for the Taxpayer.

8. Bob Stanley, an employee of the Lancaster County Assessor, was present for the County Board.

II. 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 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer purchased the Subject Property February 15, 2019, for \$760,000.
17. The Taxpayer asserts the Subject Property is not equalized with comparable properties.
18. The Nebraska Supreme Court has held, "[t]o set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."⁹
19. The Taxpayer presented a Property Record File (PRF) for the suite adjacent to the Subject Property, which the Taxpayer purports to be comparable to the Subject Property.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. Both the Subject Property and comparable are used as medical offices. Both properties have 4,514 square feet of space, as well as the same amount of brick veneer and glass panels. Both properties were built in 2003.
22. The Taxpayer stated the Subject Property was remodeled in 2019 to convert the Subject Property from its prior use to its current use. Per the Taxpayer, approximately 2/3 of the space was remodeled, with fixtures, cabinets, and flooring repurposed. The Taxpayer notes that approximately \$265,000 was spent on the remodel, but no efficiency or services were added.
23. The PRF for the Taxpayer's comparable shows that the comparable was last remodeled in 2004.
24. Both the Subject Property and Taxpayer's comparable were valued using the income approach for tax year 2020.
25. Both properties were valued using an 8% expense rate, as well as a 10% vacancy and collection rate, and an 8% capitalization rate. However, the rental rate for the Subject Property was \$17 per square foot whereas the rental rate for the comparable was \$15 per square foot.
26. The County Board presented a spreadsheet showing comparable medical office properties assessed between \$15 and \$17 per square foot.
27. Properties on that spreadsheet which had been remodeled more recently were assessed at \$17, while properties which had older remodels were assessed at \$15.
28. The Commission finds that the difference in assessment per square foot between the Subject Property and the Taxpayer's comparable is reasonably explained by Subject Property's 2019 remodel.
29. The Taxpayer further argued effects of the COVID-19 pandemic lowered the value of the Subject Property. The Taxpayer did not present evidence to quantify what, if any, adjustments were warranted to account for effects of the pandemic on the value of the Subject Property.

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.

IV. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 148,800
<u>Improvements</u>	<u>\$ 645,500</u>
Total	\$ 794,200
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 2020.
7. This Decision and Order is effective on July 20, 2023.

Signed and Sealed: July 20, 2023

Seal



Robert W. Hotz, Commissioner