

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Money Express Inc.,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case Nos: 20C 0068

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

Background

1. The Subject Property consists of an improved commercial parcel with a legal description of Lot 1 Block 1 West Hills 5th Add.
2. The Dawes County Assessor assessed the Subject Property at \$781,910 for tax year 2020.
3. Money Express Inc. (the Taxpayer) protested these values to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$382,860 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$781,910 for tax year 2020.
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 September 23, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Kuldip Singh was present at the hearing for the Taxpayer.
8. Lindy Coleman (the Assessor) and Kent Hadenfeldt (Legal Counsel) 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 didn’t understand how the assessment of the Subject Property more than doubled from tax year 2019 to tax year 2020. The Taxpayer stated no improvements had been made to the Subject Property to warrant such a large increase in value. The Taxpayer stated the Subject Property was not Section 42, rent restricted housing for tax year 2019 and has not taken any government subsidies.
17. The Assessor stated the Subject Property was valued as rent restricted housing for tax year 2019 since she was not notified it was no longer rent restricted housing. The Assessor discovered the Subject Property was no longer a rent restricted property prior to the 2020 assessment and valued the Subject Property at market value, using the cost approach in her CAMA (computer assisted mass appraisal) system, which increased the 2020 assessment.
18. By law, rent-restricted housing projects in Nebraska are assessed using a variation of the income approach. This approach is different than a typical income approach because it uses the actual income and expense data from the property being assessed and utilizes a capitalization rate determined by a committee.⁹
19. The Taxpayer stated he owns other similar properties in different cities in Nebraska and their per unit value is less than the current per unit value of the Subject Property. No

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).

⁹ See Neb. Rev. Stat. § 77-1333 (Reissue 2018).

property record files (PRF) of the comparable properties were provided for the Commission to analyze compatibility to the Subject Property.

20. The Assessor stated the comparable property owned by the Taxpayer located in Broken Bow, Nebraska, is rent restricted and therefore not a good comparable to the Subject Property. The Assessor stated the Subject Property has garages whereas the comparable properties mentioned by the Taxpayer do not.
21. 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.
22. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

| | |
|---------------------|------------------|
| Land | \$ 58,020 |
| <u>Improvements</u> | <u>\$723,890</u> |
| Total | \$781,910 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dawes County Treasurer and the Dawes 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 February 7, 2022.

Signed and Sealed: February 7, 2022

James D. Kuhn, Commissioner