

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Rocky Enterprises, LLC,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 12C 071

Decision and Order Affirming the
Determination of the Keith County Board of
Equalization

For the Appellant:

Shiloh Cochran,
Vice President, Rocky Enterprises, LLC.

For the Appellee:

Randy Fair,
Keith County Attorney.

The appeal was heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Keith County.¹ The parcel is improved with a 14,256 square foot hotel and supporting improvements.² The legal description and the property record card for the Subject Property are found at Exhibit 4.

II. PROCEDURAL HISTORY

The Keith County Assessor determined that the assessed value of the Subject Property was \$702,485 for tax year 2012. Rocky Enterprises, LLC (the Taxpayer) protested this assessment to the Keith County Board of Equalization (the County Board) and requested an assessed valuation of \$450,000. The Keith County Board determined that the assessed value for tax year 2012 was \$702,485.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on June 6, 2013.

¹ E2.

² E4:2.

³ E2.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.⁴ When the Commission considers an appeal of a decision of a County Board of Equalization, 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.”⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹⁰

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may

⁴ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *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).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

¹⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹¹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹²

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

¹¹ Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Id.*

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

Shiloh Cochran, Vice President of Rocky Enterprises, LLC, testified that the determination of the County Board was arbitrary or unreasonable because it relied upon the County Assessor's opinion of value that used the sale of an incomparable property to derive the actual value of the Subject Property. Cochran asserted that the Best Western, also known as the Stagecoach Hotel, had sold for \$3.3 million dollars and that this sale was used by the County Assessor when deriving the actual value of the Subject Property.¹⁹ Cochran testified that the Best Western is considered a resort hotel and offers many amenities that are not available at the Subject Property including a fitness room, meeting room, lounge, and park. Conversely, he testified that the Subject Property was designed to keep rates low and offered fewer amenities in comparison to the Best Western.

Cheryl Schiel, the Keith County Assessor since 1998, testified that the sale of the Best Western was not considered in the sale comparison approach used to determine the actual value of the Subject Property. Schiel testified that she utilized other data available. The County Board provided property record cards for three comparable properties that Schiel testified were similar to the Subject Property and indicated that the Subject Property had been equalized with similarly situated properties.²⁰

Schiel testified that the Subject Property was not similar to the Best Western, and the Best Western was not utilized when determining the actual value for the Subject Property. Specifically, Schiel indicated that the sale of the Best Western did not occur until November 2012, and the actual value of the Subject Property was derived as of January 1, 2012.

C. Analysis

The Commission finds that the sale of the Best Western was not utilized in the determination of the actual value of the Subject Property. Additionally, the Commission finds that the Best Western is not comparable to the Subject Property. The undisputed testimony before the

¹⁹ The property record card for the Best Western is found at E5.

²⁰ See, E6, E7, and E8.

Commission is that the County Assessor valued the Subject Property using a statutorily permissible mass appraisal method.²¹

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.²²
2. The assessed value of the Subject Property for tax year is \$702,485.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the County Treasurer and the County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.)
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 2012.

²¹ Neb. Rev. Stat. §77-712 (Reissue 2009).

²² Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on June 24, 2014.

Signed and Sealed: June 24, 2014.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.