

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Reeder Family LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14C 246

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is an industrial property improved with three buildings and a legal description of: Serum Industrial Park Lot OL6 Block 0 –Ex S 25FT IRREG W 125 E144.2ft TX Lt 4 S ½ NW SEC 11-14-12 Together with OL6, Ralston, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$303,400 for tax year 2014.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$240,000 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$303,400 for tax year 2014.
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 September 21, 2016, at the Omaha State Office Building, 1313 Farnam, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Steven Reeder was present at the hearing for Reeder Family LLC (Taxpayer).
8. Keith Nielsen of the Douglas County Assessor/Register of Deeds office was 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 the determination of the County Board of Equalization is de novo.²

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

² See, Neb. Rev. Stat. §77-5016(8) (2014 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).

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 argued that the actual income and expenses for the Subject Property support a lower assessed value for tax year 2014.
17. The Taxpayer presented information regarding his actual potential rents and actual expenses for the subject property as of June of 2014.
18. The County indicated that the Subject Property was assessed using a valuation model for storage warehouse properties in the county.
19. The Taxpayer asserted that the actual rents for the Subject Property for tax year 2014 were \$4.00 per square foot and \$3.25 per square foot.
20. The County’s model used market rents of \$4.00 per square foot and \$2.50 per square foot.
21. The Taxpayer stated that based on his experience in the real estate market he utilized a 10% capitalization rate for all three buildings located on the Subject Property. He did not

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

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2014 Cum. Supp.).

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. 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

include property taxes in the capitalization rate but instead included the real estate taxes as an expense for the subject property.⁹

22. The expenses utilized by the Taxpayer, including real property taxes, were approximately 38%. Without real property taxes these expenses would be approximately 20%.
23. The County stated that the Assessor's office conducted a capitalization rate study based on local market data to determine the appropriate rate to be used.
24. The County utilized a loaded capitalization rate¹⁰ of 10% for buildings 1 & 2 on the Subject Property and a loaded capitalization rate of 8.5% for building 3 based on the higher quality of construction for building 3.
25. The County used a 20% expense rate for all three buildings when determining assessed value of the Subject Property.
26. The Taxpayer utilized a 10% vacancy rate for building one and a 15% vacancy rate for buildings 2 & 3.
27. The County utilized a 10% vacancy rate for all buildings located on the Subject Property.
28. The County further indicated that when calibrating its assessment model it compared the assessed values determined by the model to actual sales in the county.
29. The County also presented the Property Record files for properties comparable to the Subject Property.
30. The information presented to the Commission indicates that comparable properties were assessed using the same model used to assess the Subject Property for tax year 2014.
31. A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.¹¹
32. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds.¹²
33. In an appeal "the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment."¹³
34. 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.

⁹ Operating expenses do not usually include property taxes. For assessment purposes, property taxes are usually treated as an adjustment to the capitalization rate rather than as an expense item. See, *Glossary for Property Appraisal and Assessment*, 2nd Edition, International Association of Assessing Officers, p. 114.

¹⁰ A loaded capitalization rate accounts for the property tax rate and therefore the property tax is not an allowed expense when using a loaded capitalization rate.

¹¹ *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000) (citations omitted).

¹² See, *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 401-02, 603 N.W.2d 447, 455-56 (1999)

¹³ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013) (quoting *Brenner v. Banner County Bd. Of Equal.*, 276 Neb. 275, 284, 276 N.W.2d 802, 812 (2008)).

35. 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 2014, is Affirmed.
2. The taxable value of the Subject Property for tax year 2014 is:

Land	\$ 18,300
<u>Improvements</u>	<u>\$285,100</u>
Total	\$303,400

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2014.
7. This Decision and Order is effective on December 23, 2016.

Signed and Sealed: December 23, 2016.

Steven A. Keetle, Commissioner