

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Spring Valley Homes, Inc.
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case Nos: 13C 489, 14C 439 & 15C 0760

Decision and Order Reversing the Decisions
of the Lancaster
County Board of Equalization

Background & Procedure

1. A Single Commissioner hearing was held on August 29, 2016, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
2. David A. Cook, Secretary and Treasurer of Spring Valley Homes, Inc., was present at the hearing for Spring Valley Homes, Inc. (the Taxpayer).
3. Robert Stanley, an employee of the Lancaster County Assessor (County Assessor) was present for the Lancaster County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is an 80,195 square foot (1.84 acre) vacant commercial property, zoned for office use, in Lincoln, Lancaster County Nebraska, with a legal description of: Elizabeth Park North, Block 4, Outlot F.
5. The County Assessor assessed the Subject Property at \$552,200 for tax year 2013, \$360,900 for tax year 2014, and \$336,800 for tax year 2015.
6. The Taxpayer protested these assessed values to the County Board and requested an assessed value of \$276,100.
7. The County Board determined that the taxable value of the Subject Property was \$360,900 for tax years 2013 and 2014, and \$336,800 for tax year 2015.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission) for tax years 2013, 2014, and 2015.

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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

¹ 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).

been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Subject Property was purchased by the Taxpayer in 2002 for \$334,000.
16. The County Assessor assessed the Subject Property using the Sales Comparison approach. Robert Stanley stated that the assessed value of \$336,800 would be the appropriate taxable value for each of the three tax years. This calculates to \$4.20 per square foot (\$336,800 / 80,195 square feet).
17. Both parties utilized a land sales analysis which had been prepared by a certified appraiser. That analysis compared the Subject Property with four other properties. Two of the comparables used in the analysis were sold during the applicable time period. The land sales analysis made listing adjustments for the other two comparables because the price used was a listing price, not a sales price.
18. David Cook stated that the listing adjustment land sales analysis was too low. He stated that the Subject Property had been on the market for approximately ten years and that the listing agent had suggested that offers for the listing of the Subject Property would likely come in at 60% of the asking price.

² *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) (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.).

19. The land sales analysis also did not make zoning adjustments. The Subject Property was zoned O3 – Office Park District. Three of the comparables in the land sales analysis were zoned differently than the Subject Property. A zoning adjustment was made for only one of the three. Robert Stanley reviewed the locations of the properties in the land sales analysis and stated that the adjustments appeared to be appropriate. David Cook stated that the O3 zoning was more restrictive and that the other two comparables should have also been adjusted for zoning. An aerial map indicates that the north and west sides of the Subject Property are adjacent to multiple residential parcels. Stanley explained that this proximity of the Subject Property to residential parcels was the primary reason for the zoning designation of the Subject Property.
20. Three of the comparable properties in the land sale analysis were also adjusted to account for economies of scale because their size was significantly smaller than the Subject Property.
21. None of the four properties in the land sales analysis were adjusted for access or visibility.
22. A comparison of the Subject Property and the comparable property at 5901 N. 28th Street (the comparable property) is necessary to reach an appropriate equalized value for the Subject Property. The Subject Property is not located on a main thoroughfare. The comparable property is located on the main thoroughfare North 27th Street. The Subject Property was assessed at \$4.50 per square foot for tax years 2013 and 2014, and \$4.20 per square foot for tax year 2015. The comparable property was assessed at \$3.83 per square foot. The Commission finds that the zoning of the Subject Property is more restrictive than the comparable property. The Commission also finds that the listing adjustment of 10% for the comparable property was lower than appropriate as compared to selling and listing practices. The Commission further finds that the access and visibility of the comparable property is significantly superior to that of the Subject Property.
23. The Commission finds that the characteristics of the comparable property are superior to the Subject Property. However, based upon the information received and reviewed, the Commission is unable to quantify these differences. Nonetheless, the Commission is able to find that the equalized value of the Subject Property should be no more than the assessed value of the comparable property on a per square foot basis.
24. The Commission therefore finds that the equalized value of the Subject Property should be \$307,147 (80,195 square feet x \$3.83 per square foot).
25. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. The Taxpayer has adduced sufficient, clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be reversed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax years 2013, 2014, and 2015 are Vacated and Reversed.
2. The equalized value of the Subject Property for tax years 2013, 2014, and 2015 is \$307,147.
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 (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 years 2013, 2014, and 2015.
7. This Decision and Order is effective on August 30, 2016.

Signed and Sealed: August 30, 2016

Robert W. Hotz, Commissioner