

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Hawks Hallow LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14C 228

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is an 11,126 square foot retail building, with a legal description of: Halcyon Heights, Lot 2 Block 1, Lts 1 &45 x 128 Each, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$474,400 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 \$342,500 for tax year 2014.
4. The County Board determined that the taxable value of the Subject Property was \$474,400 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 July 5, 2016, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
7. Allison Lambert-Lohrmann was present at the hearing (Taxpayer).
8. Shakil A. Malik, Deputy County Attorney, and Linda Rowe, from the County Assessor's Office 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 the 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 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).

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

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 alleged that the actual income and expenses generated by the subject property did not support the assessed value.
17. The Taxpayer only provided one year of income and expenses for the subject property.
18. The actual operating history of a subject property can be considered for appraisal purposes.⁹
19. “Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations.”¹⁰
20. “For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases.”¹¹
21. The information presented at the hearing indicates that the Taxpayer’s actual income and expense figures are not consistent with the typical income and expenses for comparable commercial properties.

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.).

⁹ The Appraisal Institute, *The Appraisal of Real Estate*, at 481-83 (12th ed. 2008).

¹⁰ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

¹¹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 341 (2011).

22. The Taxpayer also argued that the condition rating of the Subject Property was too high based on the actual condition of the Subject Property.
23. The information presented at the hearing failed to demonstrate that the condition rating of the Subject Property was incorrect.
24. The County Board indicated that it utilized the all of the information it had regarding the Subject Property and the market for similar commercial properties when determining the assessed value of the Subject Property of \$474,400 as of January 1, 2014.
25. The County Board further asserted that the sale of the Subject Property approximately seven months prior to the assessment date for \$495,000 supported the County Boards determination of value for tax year 2014.
26. 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.
27. 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	\$ 34,600
<u>Improvements</u>	<u>\$439,800</u>
Total	\$474,400

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 September 2, 2016.

Signed and Sealed: September 2, 2016.

Steven A. Keetle, Commissioner