

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Frontier Livestock Ogallala, LLC,  
Appellant,

v.

Keith County Board of Equalization,  
Appellee.

Case No: 16C 0011

Decision and order Reversing Keith  
County Board of Equalization

Background

1. The Subject Property is a Commercial Parcel improved with a 7,500 square foot Warehouse Store, with a legal description of: Lot B Jehorek's Replat 3.01 A, 02-13-29, Keith County, Nebraska. It should be noted that the Taxpayer filed a single protest with the Keith County Board of Equalization which included two other parcels together with the Subject Property. *Neb. Rev. Stat. § 77-1502 (1)* provides that for protests of real property (filed with the county board of equalization), separate protests shall be filed for each parcel. Because the Taxpayer included all three parcels in his protest, the Commission by separate order has determined that it is without jurisdiction to consider the Taxpayer's separate appeals regarding those other two parcels.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$390,385.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$375,000 for the total of the three parcels for tax year 2016. The Taxpayer's appeal does not delineate a specific requested assessed value for the Subject Property alone.
4. The County Board determined that the taxable value of the Subject Property was, \$390,385 for tax year 2016.
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 May 31, 2017, at the Hampton Inn, North Platte, Nebraska, before Commissioner Nancy J Salmon.
7. Robert W. Myers was present at the hearing on behalf of the Taxpayer.
8. Randy Fair, Keith County Attorney, 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.<sup>1</sup>

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<sup>1</sup> See, *Neb. Rev. Stat. §77-1301(1)* (Reissue 2009).

10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the total value of the three parcels involved in his single protest was excessive when compared to other commercial properties in the Keith County area. The County denied the Taxpayer's appeal and did not consider an appraisal submitted at the protest hearing. The Assessor indicated that the protest form should not have contained three separate parcels by virtue of *Neb. Rev. Stat. § 77-1502*. The Commission agrees with the Assessor's opinion with respect to this issue, and for that reason considers only the Subject Property (not the other two parcels).
17. The Taxpayer presented a detailed appraisal prepared by Thomas Luhrs, a certified general real estate appraiser. The appraisal submitted examined the cost, income, and

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<sup>2</sup> See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

sales comparison approaches. The appraiser ultimately elected to utilize the sales comparison approach in his determination of actual value of the Subject Property. His ultimate conclusion indicated his opinion of the value of the Subject Property (together with the other two parcels) was \$375,000. He did not separate the values of the improvements from the land. The Commission has examined the appraisal in detail and finds that the appraiser's opinion of value is amply supported by comparable sales. However, since the appraisal includes the two parcels referred to above (which are not part of this appeal), it is necessary to extrapolate the appraiser's opinion as to such parcels from the appraisal opinion. The appraiser valued the total land of the three parcels at \$7,500 per acre. The Subject Property contains 3.01 acres. Thus, the Commission finds that the value of the land of the Subject Property is \$22,575. With respect to the improvements on the Subject Property, the Commission accepts the appraiser's opinion. After subtracting the appraiser's land value of \$7,500 per acre from his total value of the three tracts (\$375,000 minus \$82,650), the value of the improvements is \$292,350. Because the appraisal is for a specific value at a specific time, the Commission notes that it is inappropriate to increase the value of this property by 11%.

18. Based upon the evidence submitted, the Commission finds the value of the Subject Property to be \$314,925. Included in this value is the land value of \$22,575.
19. 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.
20. The Taxpayer has 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 vacated.
21. 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 2016, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 22,575
<u>Improvements</u>	<u>\$292,350</u>
Total	\$314,925

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 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 2016.
7. This Decision and Order is effective on June 14, 2017.

Signed and Sealed: June 14, 2017

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Nancy J Salmon, Commissioner