

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

KME, LLC,
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 16C 0013

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is commercial property improved with a 2068 square foot commercial building, with a legal description of: Lot 2, O'Donnell's Administrative Replat, Ogallala, Keith County, Nebraska.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$225,555 for tax year 2016.
3. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$111,672 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$192,445 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. R. Kevin O'Donnell 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 1.¹
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

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

² 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).

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 record contains a letter from the Taxpayer dated June 7, 2016, which indicates that he is protesting both the 2015 and 2016 assessed valuations for the Subject Property. No other reference to tax year 2015 is made in the record, and the Commission notes that no appeal was filed by the Taxpayer with respect to 2015.
17. With respect to tax year 2016, the Taxpayer asserts that the Subject Property is valued higher than his neighbors’ properties. The County Assessor disagrees and contends that the Taxpayer’s value analysis is flawed.
18. As pointed out by the Taxpayer in his Memorandum Brief in Support of Redetermination of Property Valuation, the County Assessor’s Reconciliation report contained in the record does contain numerous mathematical mistakes and typographical errors. However, the Commission has reviewed the report in detail and finds its conclusions to be reasonable, not arbitrary, and supported by the evidence.
19. The Taxpayer purchased the Subject Property in 2013 for \$57,000 and significantly remodeled it. He also added a 960 square foot addition. The Taxpayer provided nine examples of properties in his neighborhood which he felt were comparable to his. He analyzed the square footage of each property and concluded that the average square

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) (2016 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) (2016 Cum. Supp.).

footage of such properties was \$57 per square foot. He then multiplied the square footage of the Subject Property by \$57 and stated that the product of this calculation constituted the taxable value of the Subject Property. If taxable values are to be equalized, it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed upon his or her property when compared with valuations placed on similar property is grossly excessive and is the result of a systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which, in effect, amounts to an intentional violation of principle of practical uniformity. A critical element of the Taxpayer's analysis is his use of averages to evidence lack of equalization. The use of averages is not a professionally accepted method of reconciling valuations.⁹

20. In reviewing the Taxpayer's alleged comparable properties, the Commission finds that the comparable properties have significant differences in age, square footage, lot size, condition, and use. Accordingly, the Taxpayer's square footage average analysis is not found to be reliable.
21. The County Assessor utilized a sales comparison analysis utilizing three comparable sales of law offices in Ogallala. While the number of comparable sales was small, the Commission finds that they do constitute a basis for the Assessor's recommended taxable valuation of the Subject Property. Noting an error in the land aspect of the valuation, the County Assessor determined that the value of the dwelling and buildings should be \$212,220 and the land value \$16,435 for a total of \$228,655. However, this recommendation exceeds the value set forth in the initial notice of value given to the Taxpayer. The Commission may find a taxable value in excess of the highest taxable value for which notice was given by the County Assessor, County Board of Equalization or Property Tax Administrator only if notice of a higher taxable value is given by a party.¹⁰ No such notice was provided to the Taxpayer. Therefore, the Commission finds that the assessed value of the Subject Property may not exceed \$225,555.
22. The Commission finds that the taxable value of the Subject Property is \$209,165 for the improvements (based upon the limitation of total assessed value noted in the preceding paragraph) and \$16,390 for the land for a total valuation of \$225,555.
23. There is competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. There is clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be reversed.

ORDER

IT IS ORDERED THAT:

⁹ The Appraisal of Real Estate, 13th Ed., pp 307-308.

¹⁰ 350 Neb. Admin. Code ch. 14 § 016.02.

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	\$ 16,390
<u>Improvements</u>	<u>\$209,165</u>
Total	\$225,555

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 16, 2017.

Signed and Sealed: June 16, 2017

Nancy J. Salmon, Commissioner