

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chadron Hospitality, LLC,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No: 17C 0040

Decision and Order
Reversing the Decision of the
Dawes County Board of Equalization

For the Appellant:

Andrew Willis,
Cline Williams Wright Johnson & Oldfather, LLP

For the Appellee:

Joe W. Stecher,
Deputy Dawes County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Dawes County. The parcel is improved with an 18,625 square foot hotel. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 21.

II. PROCEDURAL HISTORY

The Dawes County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$4,774,565 for tax year 2017. Chadron Hospitality, LLC (the Taxpayer) protested this assessment to the Dawes County Board of Equalization (the County Board) and requested an assessed valuation of \$1,820,160. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$4,774,565.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of Exhibits 1 through 21, and made a stipulation regarding the value of the property, discussed further below. The Commission held a

¹ Ex. 1.

hearing on June 28, 2018, with Commissioner Hotz presiding. Michael A. Works, manager and part-owner of the Taxpayer, testified at the hearing. Exhibit 22 was offered by the Taxpayer and received without objection.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² When the Commission considers an appeal of a decision of a County Board of Equalization, 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

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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 The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁸

² 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).

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 *Bottorf v. Clay County Bd. of Equalization*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”⁹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. VALUATION

A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

⁹ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-112 (Reissue 2009).

¹³ *Id.*

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁶ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁷ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Facts & Analysis

This appeal involves a newly constructed hotel which had not been completed as of the relevant assessment date, January 1, 2017. In the Prehearing Conference Report, the parties stipulated as follows:

For the sole purpose of this appeal, the parties agreed to stipulate that the full assessed value of the property at 100% construction completion, including the land, building(s) and other improvements, is \$5,370,047.00, as evidenced by the property's 2018 valuation. The sole unresolved issue is the percentage of construction completion as of January 1, 2017, which must be applied to the stipulated completed value of \$5,370,047.00 in order to calculate the 2017 valuation.¹⁸

At the hearing, the County Board called no witnesses and presented no documentary evidence except for the required Property Record File (PRF) for the Subject Property. Thus, the claim that construction was incomplete as of January 1, 2017, was undisputed. According to a letter from the Taxpayer's general construction contractor, the contractor had billed \$2,304,000 to the Taxpayer as of January 1, 2017.¹⁹ The total contracted general construction cost of the building, not including the purchase of the land, "soft costs,"²⁰ and furniture, fixtures, and equipment ("FF&E"),²¹ was \$5,513,722.²²

The only witness called at the hearing was the Taxpayer's manager, Mr. Works. He testified that construction of the Subject Property began in July 2016, with the intent to complete the exterior of the hotel by winter and perform the majority of interior construction during the winter months. As of January 1, 2017, the exterior of the hotel had been completed, but the interior construction, including drywall, flooring, plumbing, and electrical, was not complete. The hotel was not open for business as of January 1, 2017; it opened for business on May 20, 2017. Consistent with the documentary evidence, Mr. Works testified that the Taxpayer had spent approximately 2.3 million dollars on construction as of January 1, 2017. In Mr. Works's opinion,

¹⁸ See Prehearing Conference Report at 1, Case File. The Commission wishes to observe that there are several possible methods for calculating the value of a building while it is under construction. Our decision to use the methodology proposed by the parties in their stipulation is based on the specific nature of this case, and this methodology may not be applicable in other appeals.

¹⁹ Ex. 3.

²⁰ These "soft costs" included various fees and insurance costs. See Ex. 22 at page 38.

²¹ In real estate appraisal, *trade fixtures* "retain the character of personal property, as opposed to all other fixtures that were, but are no longer, personal property when they are attached to and become part of the real estate." Appraisal Institute, *The Dictionary of Real Estate Appraisal*, at 234 (6th ed. 2015).

²² Ex. 22, page 38.

the actual value of the Subject Property on January 1, 2017, was less than the amount the Taxpayer had paid to the contractor, but Mr. Works was unable to provide a precise value he believed a buyer would have paid for the incomplete improvements. Mr. Works also testified that the Taxpayer paid \$500,000 for the land portion of the Subject Property because the parcel was the only site in the area that was eligible for Tax Increment Financing (TIF) and capable of supporting a hotel. Mr. Works opined that \$37,000 was a reasonable price for the land without considering the TIF eligibility. The Commission's Case File indicates that the County Assessor determined the value of the land component of the Subject Property to be \$37,595 for tax year 2017.²³

The Commission finds that the actual value of the improvement to the Subject Property as of January 1, 2017, is equal to the ratio of construction costs paid as of that date to the total cost of construction (not including FF&E, soft costs, or the actual cost of land), multiplied by the 2018 assessed value of the Subject Property less the assessed value of the land.²⁴ The result is \$2,228,965 in improvement value; the total including a land value of \$37,595 is \$2,266,560.

The Commission therefore finds that the taxable value of the Subject Property was \$2,266,560 as of January 1, 2017.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.²⁵

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

²³ The record in this case does not include a copy of the 2018 assessment or property record file; the Commission assumes that the land value remained constant at \$37,595.

²⁴ $\$2,304,000 \div \$5,513,722 = 41.8\%$. $41.8\% \times (\$5,370,047 - \$37,595) = \$2,228,965$. $\$2,228,965 + \$37,595 = \$2,266,560$.

²⁵ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawes County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is vacated and reversed.

2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 37,595
<u>Improvements</u>	<u>\$ 2,228,965</u>
Total	\$ 2,266,560

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawes County Treasurer and the Dawes 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 2017.

7. This Decision and Order is effective for purposes of appeal on August 31, 2018.²⁶

Signed and Sealed: August 31, 2018

Robert W. Hotz, Commissioner

SEAL

Steven A. Keetle, Commissioner

²⁶ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.