

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

Covenant Properties, LLC,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case No: 18C 0006

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is commercial storage building, with a legal description of: The W578' of E728' of N100' of NE1/4 NE1/4 Unplatted 21-29-9.
2. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$450,710 for tax year 2018.
3. Covenant Properties LLC (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board) and requested a lower value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$450,710 for tax year 2018.
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 11, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. John Grady was present at the hearing for the Taxpayer.
8. Jeff Curry, the Assessor, and Joe Wilson, the Appraiser, 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.<sup>1</sup>
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

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<sup>1</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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.”<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 stated the Subject Property is currently vacant and has been listed for sale or lease for almost a year. The Taxpayer offered a Brokers Opinion of Value (BOV) by Chris Bogenrief of NAI United with an indicated value of \$570,000. The indicated value would only be good if the Taxpayer made \$160,000 improvements to the roof and dock door being constructed, without these improvements the BOV indicated value would be \$410,000.
17. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>9</sup> Although the BOV has evidentiary value, it is not the equivalent of a professional appraisal certified to conform to the applicable standards. Accordingly, the Commission does not find the BOV, standing alone, to constitute competent evidence to rebut the presumption in favor of the County Board.
18. The Taxpayer offered a commercial purchase agreement of \$375,000; however, the parcel identification numbers and the address of the property listed in the agreement do not match the parcel identification number or address of the Subject Property. It appears

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

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>9</sup> *JHQ La Vista Conf. Ctr. Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

this document is an offer to buy a property other than the Subject Property and no weight was given by the Commission to this commercial purchase agreement.

19. The Taxpayer asserted the Subject Property was in need of improvements in order to be able to sell. Roof damage, no docks, age, and location are all factors that make the Subject Property less desirable to potential buyers according to the Taxpayer. Some interior damage has been caused by the leaking roof. The Taxpayer is uncertain if loading docks are even feasible on the Subject Property due to limited area for trucks to enter and back up.
20. The Assessor stated the current quality and condition rating of 100 quality and 20 condition are taking the roof and interior damage into consideration. Normally a storage warehouse that is productive would have a higher quality and condition rating. The Assessor provided evidence of productive warehouses within the county showing a per square foot value two to three times higher than the current per square foot value of the Subject Property.
21. 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.
22. 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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 19,800
<u>Improvements</u>	<u>\$430,910</u>
Total	\$450,710

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
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 2018.
7. This Decision and Order is effective on August 9, 2019.

Signed and Sealed: August 9, 2019

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James D. Kuhn, Commissioner