

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

RML Investments, Inc.,
Appellant,

v.

Dodge County Board of Equalization,
Appellee.

Case No: 18C 0031

Decision and Order Affirming the
Determination of the Dodge
County Board of Equalization

Background

1. The Subject Property is a commercial parcel improved with seven buildings, with a legal description of: Seatons Sub Replat Lot 1 (of Lot 9, PT Lots 1 & 10), Fremont, Dodge County, Nebraska.
2. The Dodge County Assessor (the County Assessor) assessed the Subject Property at \$836,340 for tax year 2018.
3. The Taxpayer protested this value to the Dodge County Board of Equalization (the County Board) and requested an assessed value of \$610,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$836,340 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 May 30, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. Ronn A. Winquest was present at the hearing for RML Investments (the Taxpayer).
8. Chad R. Howser and Craig Miller of the Dodge County Assessor's Office (the County Appraisers) 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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² 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).

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 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 Subject Property is improved with seven storage buildings and mini storage units.
17. The Taxpayer presented site plans and building permits for additions made to the Subject Property, which included two new buildings and concrete.
18. The Taxpayer alleged that the assessed value of the Subject Property should only have increased by the cost of these additions.
19. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior year’s assessment was excessive and unreasonable.
20. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
21. The County Appraisers discussed a land value study that was conducted by the Dodge County Assessor, and indicated that the result of the study was a land revaluation for all

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

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

commercial properties in Dodge County for the 2018 assessment year. The most recent prior land revaluation had been implemented in 2011.

22. The land value of the Subject Property increased by \$110,000 as a result of the land value study.
23. The County Appraisers stated that they were familiar with the building permits and had inspected the Subject Property and the new buildings as well as the other buildings located on it.
24. The County Appraisers stated that building permits issued by the City of Fremont did not include flat concrete work in their permit values. There were several areas of flat concrete added to the Subject Property that were included in the 2018 assessment.
25. The County Appraisers indicated that the value of the new flat concrete added to the Subject Property was included in the value of one of the new buildings added.
26. In addition to the inclusion of the new buildings and concrete, the County Appraisers inspected and updated the characteristics of all of the buildings located on the Subject Property. The characteristics of the storage warehouse building, for example, were changed by correcting for the style of construction¹¹ and reducing its quality rating. The County Appraisers stated that even with the reduction in quality, the value of the storage warehouse increased due to these changes.
27. The County Appraisers stated that they primarily utilized the cost approach to valuation for the buildings located on the Subject Property because they did not have income and expense data or recent sales information pertaining to mini storage properties.
28. The Taxpayer alleged that his actual cost of adding the two new buildings and concrete for 2018 was close to the amount listed on the building permits. The Taxpayer did not provide invoices or other cost information for these new structures or any of the other five structures and concrete located on the Subject Property.
29. 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.
30. 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.

¹¹ Changed to 50% concrete block and 50% stud with metal siding.

2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$221,500
<u>Improvements</u>	<u>\$614,840</u>
Total	\$836,340

3. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge 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 May 8, 2020.

Signed and Sealed: May 8, 2020

Steven A. Keetle, Commissioner