

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Jack A. Potts
Appellant,

v.

Keith County Board of Equalization,
Appellee.

Case No: 13R 010

Decision and Order Affirming the Decision
of the Keith
County Board of Equalization

The Subject Property

1. The Subject Property is a lakefront cabin on Lot 31 of the K-1 area at Lake McConaughy in Keith County, Nebraska. The cabin is located on leased public land. Lot 31 is owned by the Central Nebraska Public Power & Irrigation District (CNPPID) and was sub-leased to Jack A. Potts as of the effective date, January 1, 2013.
2. The legal description of the property is found in the Case File.

Procedural History

3. The Keith County Assessor (the County Assessor) assessed the Subject Property at \$98,225 for tax year 2013, including \$70,000 for the leasehold interest¹ (land) and \$28,225 for the improvements.
4. The Taxpayer protested this value to the Keith County Board of Equalization (the County Board) and requested a taxable value of \$28,225 for tax year 2013.
5. The County Board determined that the taxable value of the Subject Property was \$98,225 for tax year 2013.
6. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on October 2, 2014, at the Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Robert W. Hotz.
8. Jack A. Potts was present at the hearing.
9. Randy Fair, Keith County Attorney, was present for the County Board. Cheryl Schiel, Keith County Assessor, was also present at the hearing.

Applicable Law

10. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ "Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property." Neb. Rev. Stat. §77-1374.

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. Cheryl Schiel stated that the cabins on the K-1 properties at Lake McConaughy were valued for tax year 2013 using a cost approach. Depreciation was based upon recent sales of comparable improvements. The leasehold values were determined by evaluating sales of K-1 cabins and subtracting the cost approach value of the improvements to account for leasehold values using extraction methods.
17. Schiel explained that for tax year 2013, K-1 leaseholds were valued at \$30,000, \$50,000, and \$70,000, based upon criteria relating to the proximity of the Lot to the lake. Proximity criteria included lake access from the lot, linear feet of frontage to the lake, and scenic view. Size was not considered a proximity criteria, since the metes and bounds of each lot were not known to the assessment officials.

² See, Neb. Rev. Stat. §77-5016(8) (2012 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(8) (2012 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) (2012 Cum. Supp.).

18. Schiel stated that using the proximity criteria stated above, the leasehold value of the Subject Property was determined to be \$70,000 for tax year 2013.
19. Schiel further stated that more recent sales indicated even higher values.
20. Jack Potts did not dispute that portion of the value of the Subject Property which was attributed to the cabin improvement.
21. Potts described the Subject Property lot as having about 100 feet of frontage to the lake with access to the water, and having a good scenic view of the lake and its surroundings.
22. His only dispute was with the amount allocated to the value of the leasehold interest.
23. Potts stated that he owned the cabin and leased the public land on January 1, 2013, until he sold the cabin on July 25, 2014, for \$150,000. A Form 521 confirms this sale.
24. Potts raised equalization issues relating to the assessment of two other K-1 properties.
25. Potts' first equalization argument involved a nearby K-1 property at Lots 34 and 35. Lots 34 and 35 were combined by a single owner with only one cabin on the combined property. As combined, Lots 34 and 35 were larger than the Subject Property. Potts argued this property was underassessed because the two buildable lots were assessed at a total of \$70,000. No evidence was adduced to support a conclusion that the difference in size of combined Lots 34 and 35 and the size of the Subject Property had a bearing on the market value of the leaseholds.
26. Potts also asserted that the leasehold value of K-1 Lot 36 was not equalized with the leasehold value of the Subject Property. The leasehold value of Lot 36 for tax year 2013 had been determined to be \$50,000. Potts asserted that the Subject Property should get the same assessment as Lot 36.
27. Both Potts and Schiel stated that in order to access Lot 36 with a vehicle, an easement had been created across an adjoining lot. There was no necessity for an easement in order to access the Subject Property. The necessity for the easement may reasonably explain why the leasehold at Lot 36 was valued lower than the leasehold of the Subject Property.
28. 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.
29. The Taxpayer has not adduced sufficient, 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 Keith County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$98,225.

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 (2012 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 2013.
7. This Decision and Order is effective on October 8, 2014.

Signed and Sealed: October 8, 2014

Robert W. Hotz, Commissioner