

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Scott Snyder,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case No: 13R 008

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

1. A Single Commissioner hearing was held on July 7, 2014, at Hampton Inn North Platte, 200 Platte Oasis Parkway, North Platte, Nebraska, before Commissioner Salmon.
2. Scott Snyder (the Taxpayer) was present at the hearing.
3. Katharine L. Gatewood, Deputy Dawson County Attorney, was present for the Dawson County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) consists of improvements on a parcel of leased land including a 4,606 square foot dwelling, and a leasehold interest for the land. The parcel has a legal description of: Lot 19 (23) Bass Bay, Johnson Lake 31-9-22, Dawson County, Nebraska.

Background

5. The Dawson County Assessor (the Assessor) assessed the Subject Property at \$518,916 for tax year 2013.
6. The Taxpayer protested this value to the Dawson County Board and requested an assessed value of \$422,646 for tax year 2013.
7. The Dawson County Board determined that the taxable value of the Subject Property was \$518,916 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “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.”²

¹ 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).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. 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
11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Assessor assigned an area of 34,592 square feet to the parcel associated with the Subject Property. The Leasehold Value was determined by multiplying a per square value by the area of land associated with the lease. The Assessor calculated the Leasehold Value at \$3.55 pre square foot.
15. The Taxpayer asserted that the area used by the Assessor to determine the Leasehold Value of the Subject Property for 2013 was incorrect. He provided a document he obtained from the Lessor indicating that the land associated with the Subject Property has a total area of 17,023 square feet.
16. The County Assessor stated that the leasehold interests were revalued in 2013 after reviewing several sales. He stated that the assigned leasehold interest values ranging from \$7.10 per square foot to \$3.55 per square foot depending upon the size of the lot and taking into account the principle of diminishing returns. He stated that the length of lakefront was also analyzed, but that his analysis indicated that total area was the better indicator of the Leasehold Value.
17. The County Assessor provided a map of the parcel associated with the Subject Property, and neighboring parcel. The map contains measurements of the perimeter of the lots on the map. The Commission notes that estimates of the land associated with the Subject Property calculated from the County Assessor’s map indicate that the area of the Subject Property is likely between 16,000 to 18,000 square feet. Additionally, a review of the proportionality of the other lots as compared to the parcel associated with the Subject

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).

Property supports this indication and the parcel size obtained by the Taxpayer from the lessor.

18. The Commission finds that actual area of the land associated with the lease is 17,023 square feet. After a review of the leasehold values found on the property record cards provided by the County Board, the Commission notes that the leasehold value of a 14,559 square foot lot is valued at \$6.80 per square foot and the leasehold value of a 22,065 square foot lot is \$6.60 per square foot.
19. Based upon the principle of diminishing returns the Commission finds that the Subject Property's Leasehold value should not be less than \$6.60 per square foot.
20. The Commission finds the most reasonable evidence of value indicates that the taxable value of the leasehold interest is \$112,352. (17,023 (sq. ft.) x \$6.60=\$112,352.)
21. The County Assessor asserted that the properties used to determine the value of the improvements located on the Subject Property possessed different characteristics than the Subject Property; including less gross living area.
22. The Commission notes that the County Assessor provided a cost approach estimate of the value of the improvements located on the Subject Property.
23. The Commission finds that the most reasonable evidence of the improvement value for the Subject Property is the County Assessor's cost approach. The Property Record card for the Subject Property indicates that the improvement valuation using the cost approach is \$406,580.
24. The Commission finds that the valuation of the Subject Property should be \$518,932. (Leasehold value \$112,352 + improvement value \$406,580 = 518,932).
25. The Commission notes that although calculated differently and allocated in different proportions, the Commission's value is only \$16 more than the County Board's determination.
26. Additionally, the Commission notes that both the Commission's value and the County Board's determination would each round to \$519,900.
27. The Commission finds that while the allocation was incorrect, the County Board's determination was not unreasonable.
28. The Taxpayer has 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 unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Dawson 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:

| | |
|--------------|-----------|
| Land | \$122,800 |
| Improvements | \$396,116 |
| Total | \$518,916 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dawson County Treasurer and the Dawson 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 July 14, 2014.

Signed and Sealed: July 14, 2014

Nancy J. Salmon, Commissioner