

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Flash Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15C 0078

Decision and Order Reversing the
County Board of Equalization

Background

1. The Subject Property is a 3,694 square foot office building, with a legal description of: Indian Creek Business Park Condo, Lot 3 Block 0, 33.33%, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$625,700 for tax year 2015.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$481,300 for tax year 2015.
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 January 5, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room F, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Larry R. Forman was present at the hearing for Flash Inc. (Taxpayer).
8. Shakil A. Malik Deputy Douglas County Attorney was 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
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

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

² See, Neb. Rev. Stat. §77-5016(8) (2014 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).

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 Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed value of comparable properties because the Subject Property is classified as a Condo while the comparable properties are classified as one story office buildings. The Taxpayer alleges that the classification of the Subject Property as a Condo rather than a one story office building is a distinction without a difference.
17. The Subject Property is one third of a one story office building. Each third of the one story office building is owned by a different person or entity.⁹
18. The Taxpayer offered the Property Record Files (PRF) of two properties that were comparable to the Subject Property in terms of construction, year built, Quality, Condition, location and Use. The only major difference between the Taxpayer’s comparable properties and the Subject Property is that the buildings on the comparable properties are owned by a single owner while the building in which the Subject Property is located is owned by three separate owners.
19. The PRF’s for the Taxpayer’s comparable properties contain commercial income worksheets that indicate they were both assessed using the same rental rates, vacancy and collection loss, expense rate, and capitalization rate.

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) (2014 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) (2014 Cum. Supp.).

⁹ As opposed to each entity owning a one third interest in the entire building.

20. Micaela Larsen, an Appraiser for the Douglas County Assessor/Register of Deeds office (the Appraiser) indicated that in the area of the county in which the Subject Property is located, commercial condos and one story office buildings are assessed using the same mass appraisal model, except that condos are assigned a higher rental rate per square foot than a one story office building. The Appraiser also indicated that in the case of the Subject Property and the Taxpayer's comparable properties the difference in rental rate was not due to differences in square footage but simply because of the classification as a condo versus a one story office building.
21. The County alleged that it assessed properties classified as a condo differently than properties classified as a one story office building due to information set forth in the Benchmark Analysis and Capitalization Rate Study dated October 31, 2014.
22. There is, however, no information in the Study regarding the rental rates or capitalization rates applicable to a property classified as a condo or condominium to support this contention.
23. The information presented to the Commission supports the Taxpayer's contention that the classification of the Subject Property as a condo and the Taxpayer's comparable properties as one story office buildings is a distinction without a difference.
24. The Commission finds and determines that the assessed value of the Subject Property for tax year 2015 is \$404,300.¹⁰
25. The Taxpayer alleged that the value of the Subject Property should be reduced due to the lack of commercial development around the Subject Property.
26. The Taxpayer presented information regarding platted but currently undeveloped lots near the Subject Property.
27. The Taxpayer failed to produce any information to quantify any impact this lack of development near the Subject Property would have on the value of the Subject Property or commercial property values in general.
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 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 vacated.

ORDER

IT IS ORDERED THAT:

¹⁰ Potential gross income \$72,033 (\$19.50 rental rate x 3,694 sq. ft. = \$72,033). Vacancy and collection loss \$8,500 (\$72,033 potential gross income x 11.8% vacancy and collection loss rate = \$8,500). Potential Gross Less Vacancy and Loss \$63,533 (\$72,033 - \$8,500). Expenses \$19,060 (\$63,533 potential gross less vacancy and loss x 30% Expense Rate = \$19,060). Net Operating Income (NOI) \$44,473 (\$63,533 potential gross less vacancy and loss - \$19,060 expenses = \$44,473). Final Indicated Property Value \$404,300 (\$44,473 NOI / 11% Capitalization Rate = \$404,300)

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2015 is \$404,300.
3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 2015.
7. This Decision and Order is effective on March 16, 2017.

Signed and Sealed: March 16, 2017

Steven A. Keetle, Commissioner