

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gerhold Inc.,
Appellant,

v.

Platte County Board of Equalization,
Appellee.

Case No: 16C 0025, 16C 0026, 16C 0027,
16C 0028, 16C 0029, 16C 0030, 16C 0031,
16C 0032, 16C 0033, 16C 0034, 16C 0035,
16C 0036, 16C 0037

Decision and Order Affirming Platte
County Board of Equalization

Background

1. The Subject Properties are 13 parcels of vacant commercial land, with legal descriptions as follows:

16C 0025 Pt Lot 1, Blk A Village 1st Addition,
16C 0026 Lot 2 Blk, Village 1st Addition
16C 0027 Pt Lot 3 Blk A Village 1st Addition,
16C 0028 Lot 7 Blk A Village 1st Addition
16C 0029 Lot 8 Blk A Village 1st Addition
16C 0030 Lot 9, Blk A Village 1st Addition
16C 0031 Lot 32 Blk A Village 1st Addition,
16C 0032 Lot 33, Blk A Village 1st Addition
16C 0033 Lot 34, Blk A Village 1st Addition
16C 0034 Lot 35 Blk A Village 1st Addition
16C 0035 Lot 36, Blk A Village 1st Addition
16C 0036 Lot 37, Blk A Village 1st Addition
16C 0037 Pt SW ¼ 16-17-1E 5.89 Ac,
all in Platte County, Nebraska.

2. The Platte County Assessor (the County Assessor) assessed the Subject Properties for tax year 2016 as follows:

16C 0025 \$26,035
16C 0026 \$41,390
16C 0027 \$70,145
16C 0028 \$70,950
16C 0029 \$47,300
16C 0030 \$47,300
16C 0031 \$64,965
16C 0032 \$63,915
16C 0033 \$116,275
16C 034 \$113,835

16C 0035 \$111,395

16C 036 \$108,935

16C 0037 \$88,350

3. The Taxpayer protested these values to the Platte County Board of Equalization (the County Board) and requested an assessed value for tax year 2016 of:

16C 0025 \$2,975

16C 0026 \$4,500

16C 007 \$7,000

16C 0028 \$7,300

16C 0029 \$5,900

16C 0030 \$5,900

16C 0031 \$8,120

16C 0032 \$7,990

16C 0033 \$9,680

16C 0034 \$9,490

16C 0035 \$9,270

16C 0036 \$9,075

16C 0037 \$47,120.

4. The County Board determined that the taxable values of the Subject Properties were equal to the values determined by the County Assessor as described in paragraph 2 above.

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 6, 2017 at the Ramada Columbus & Rivers Edge Convention Center, 265 33rd Avenue, Columbus, Nebraska, before Commissioner Nancy J Salmon.

7. Stuart Gerhold was present at the hearing on behalf of the Taxpayer.

8. Thomas Placzek, Platte County Assessor and Elizabeth Lay, Deputy Platte County Attorney, 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 See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 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).

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 Commission notes that at the hearing, the Taxpayer did not present evidence to dispute the assessed value of the Subject Property described in Case No. 16C 0037. In fact, the Taxpayer indicated that he had no objection to such value.

17. The Subject Properties are each tracts of land which are platted and listed for sale. The Taxpayer contends that the square foot value for each of the Subject Properties (except for Case No. 16C 0037) is excessive. He provided several listings of other commercial properties in the Columbus area. It was his contention that the listings that he provided were comparable to the Subject Properties and asked that his values be lowered accordingly.

18. The County Assessor provided a list of sales as well as a map showing the locations of the sales utilized by his office. The Assessor also indicated that the listings provided by the Taxpayer were not comparable to the Subject Properties. He noted that the listings were not actual sales and were for properties located on the west side of Columbus. According to the Assessor, properties in western Columbus generally have lower values than property in the

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) (2016 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) (2016 Cum. Supp.).

eastern part of the city. The Subject Properties are located in the eastern section of Columbus.

19. The County Assessor provided the Commission with a map showing several sales. He also provided property record cards for these alleged comparable properties. He noted that one of the comparable parcels was across the road from the Subject Properties contained in Cases Nos. 16C 0025, 16C 0026, and 16C 0027 and sold for \$5.03 per square foot. The Subject Properties described in these three cases are assessed at \$3.50 per square foot. He also provided information regarding three other sales of properties which he felt were comparable to the Subject Properties. Each of these comparables sold at square footage prices considerably higher than the Subject Properties.

20. Upon review of the information provided by the parties, the Commission finds that the comparable properties provided by the County Assessor are reliable indicators of value of the Subject Properties.

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 2016, is Affirmed.

2. The taxable value of the Subject Properties for tax year 2016 are:

16C 0025	\$ 26,035
16C 0026	\$ 41,390
16C 0027	\$ 70,145
16C 0028	\$ 70,950
16C 0029	\$ 47,300
16C 0030	\$ 47,300
16C 0031	\$ 64,965
16C 0032	\$ 63,915
16C 0033	\$116,275
16C 0034	\$113,835
16C 0035	\$111,395
16C 0036	\$108,935
16C 0037	\$ 88,350

3. This Decision and Order, if no further action is taken, shall be certified to the Platte County Treasurer and the Platte 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 2016.
7. This Decision and Order is effective on July 21, 2017.

Signed and Sealed: July 21, 2017

Nancy J Salmon, Commissioner