

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Dingmans 144th LLC,  
Appellant,

Dingmans Saddle Creek, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 15C 0806, 15C 0807

Decision and Order Affirming  
the Decisions of the Douglas County Board  
of Equalization

**For the Appellant:**  
Benjamin White,  
Law Offices of White & Jorgensen

**For the Appellee:**  
Shakil A. Malik  
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property consists of two separate commercial parcels located in Douglas County, Nebraska. The parcel at 3510 S. 144th Street is improved with a 24,443 square foot service garage (Case No. 15C 0806). The parcel at 1419 Saddle Creek Road is improved with a 11,307 square foot service garage (Case No. 15C 0807). The legal descriptions and property record cards for the Subject Properties are found at Exhibits 3 and 4.

**II. PROCEDURAL HISTORY**

In Case No. 15C 0806, the Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$1,435,400<sup>1</sup> for tax year 2015. Dingmans 144th LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$916,600.<sup>2</sup> The County Board determined that the taxable value for tax year 2015 was \$1,435,400.<sup>3</sup>

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 3:11.

<sup>3</sup> Exhibit 1.

In Case No. 15C 0807, the County Assessor determined that the assessed value of the Subject Property was \$432,500<sup>4</sup> for tax year 2015. Dingmans Saddle Creek LLC (the Taxpayer) protested this assessment to the County Board. The County Board determined that the taxable value for tax year 2015 was \$432,500.<sup>5</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged Exhibits 3 through 7, 11 through 13, and 16 through 18.<sup>6</sup> The Commission held a hearing on January 3, 2018, with Commissioner Hotz presiding. In the course of the hearing, Exhibits 1 through 7, 11 through 13, and 15 through 19 were admitted into evidence, and Exhibits 8, 9, 10, and 14 were not admitted, for the reasons stated on the record.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>7</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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.<sup>8</sup>

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.<sup>9</sup>

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<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibit 2.

<sup>6</sup> This exhibit numbering is per the Commission's Exhibit List, not per the numbering in the Pre-Hearing Conference Report submitted by the parties.

<sup>7</sup> 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).

<sup>8</sup> *Brenner* at 283.

<sup>9</sup> *Id* (citations omitted).

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.<sup>10</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>11</sup> A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>12</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>13</sup>

In an appeal, the commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>14</sup> The commission may also take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>15</sup>

## IV. VALUATION

### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>16</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>11</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>12</sup> 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. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized value).

<sup>13</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>14</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>15</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>16</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

Actual value, market value, and fair market value mean exactly the same thing.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

## **B. Summary of the Evidence**

Four witnesses testified at the hearing before the Commission.<sup>20</sup> Boyd Dingman testified that he is a member of the LLC that owns each Subject Property. With respect to the parcel in Case No. 15C 0807, Mr. Dingman testified that the Taxpayer owned and operated a collision repair center at the location at 1419 S. Saddle Creek Road. Mr. Dingman explained that due to the City of Omaha's past re-routing of Saddle Creek (*i.e.*, the creek itself, rather than the road), substantial flooding occurred in the area every year, sometimes as many as three or four times per year, after heavy rains. Mr. Dingman testified that as a result of one flooding event, his business services were delayed by one and one-half days, resulting in cleanup costs and loss of revenue. During recent flooding events, Mr. Dingman testified customer-owned automobiles that were parked in the business lot incurred water damage and approximately ten insurance claims had been made as a result of the damage.

With respect to the parcel in Case No. 15C 0806, Mr. Dingman testified that the Taxpayer had repurposed the property, which had previously been used as a bowling alley. He explained that of the 24,443 square feet of the property approximately 15,000 square feet were used for a collision repair shop, and approximately 10,000 square feet were used for a main office, a break room, restrooms, a storage room, and a locker room. Mr. Dingman testified that approximately 300 square feet were rented to a car rental company. He also testified to a variety of conditions that potentially limited the market value of the property, such as low ceilings, excessive interior space dedicated to breakrooms, storage, and restrooms, and limited exterior parking for employee or tenant vehicles.

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<sup>17</sup> *Omaha Country Club* 11 Neb.App. at 180, 645 N.W.2d at 829.

<sup>18</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

<sup>20</sup> Linda Rowe, manager of the Commercial Department of the Douglas County Assessor's office, was called as a witness. She testified that she was not involved in the assessment of the Subject Properties and was present at the hearing only in her role as department manager. Her testimony is not discussed further.

When asked about the estimates of value prepared by Mr. Bowman for both Subject Properties (Exhibits 16 and 17), Mr. Dingman testified that he believed the estimates were “about right,” but were too high. When asked for an opinion of value of the properties for 2015, he testified the Subject Properties should be assessed at an amount 10% to 15% lower than the alleged comparable properties identified by Mr. Bowman. With respect to land values (as distinguished from improvement values), he testified that he was not familiar with the values of comparable properties.

Monte Bowman, a business consultant in property tax matters, also testified on behalf of the Taxpayer. Mr. Bowman is not a licensed appraiser. Much of his testimony related to the in-person meetings with the County Assessor’s office required by Neb. Rev. Stat. §77-1311.<sup>21</sup> Mr. Bowman testified that he attended the in-person meetings on behalf of the Taxpayer for tax year 2015, and that instead of the full Property Record File, he was given only a single sheet of paper, which he asserted was inadequate to show the basis for valuation used by the County Assessor. Mr. Bowman also presented information on assessment changes for the 2016 tax year, market changes, and various other factors he believed should affect the value of the Subject Properties. His estimate of the actual values of the Subject Properties can be found at Exhibits 16 and 17; he calculated these values by averaging the assessed value per-square-foot of three other properties he alleged were comparable to both Subject Properties.

These comparable properties varied significantly in age, size, and quality, from one another and from the Subject Property, but Mr. Bowman did not make any adjustments for differences in size, condition, or quality of his alleged comparable properties. He did not perform a sales comparison analysis, an income analysis, or a cost analysis of the Subject Property.<sup>22</sup> There was no evidence that any one of the comparable properties had sold within the relevant time period.<sup>23</sup> Mr. Bowman also testified that his analysis did not account for the conditions of flooding and repurposing described by Mr. Dingman in his testimony.

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<sup>21</sup> Neb. Rev. Stat. §77-1311(6) requires that, “[d]uring such meetings, the county assessor or the county assessor’s designated representative shall provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301 and accept any information the property owner provides relevant to the property value.”

<sup>22</sup> A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. The approaches identified are the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods. Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>23</sup> Even had Mr. Bowman quantified any bases for making adjustments to the alleged comparable properties, such adjustments are not recognized in appraisal standards unless they are made to the sale price of the comparable property.

Michaela Larson, a licensed commercial appraiser employed by the Douglas County Assessor's office, testified that she had worked on the appraisals of both Subject Properties, had performed exterior inspections of the properties, and had reviewed the Property Record Files for each. She testified that the Subject Properties were assessed using the income approach for tax year 2015, and that some of the data used in calculating the value was developed by a former employee of the Assessor's office. She testified that the potential negative influence of the repurposing of the 144th Street property was reflected by lower quality and condition ratings in the assessment. She testified that she believed the flooding reported in the Saddle Creek property was taken into account in the land value, which was set at \$2 per square foot rather than the \$5 per square foot typical for that area. She also testified that she had not personally conducted an interior inspection of the properties, and she was unable to determine, from the records produced at the hearing, when an internal inspection had last occurred.

### **C. Analysis**

The Taxpayer offered evidence and made argument regarding alleged errors and irregularities in the referee and protest process used by the County Board in tax year 2015. Specifically, the Taxpayer alleged that the individual who conducted the in-person meeting required by Neb. Rev. Stat. §77-1311 failed to provide information required by statute, rule, or court order.<sup>24</sup> The Taxpayer asserts that this failure constituted a deprivation of due process, and as a result, the assessment was void, and the taxable value of the parcels should revert to the prior year's valuation.<sup>25</sup>

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<sup>24</sup> Neb. Rev. Stat. §77-1311(6) requires that, "[d]uring such meetings, the county assessor or the county assessor's designated representative shall provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301 and accept any information the property owner provides relevant to the property value." 350 NAC 10 § 003.02(A)(1)(a) requires that "in counties with at least 150,000 inhabitants, the county assessor must provide an opportunity for real property owners to meet in person with the county assessor's office to review the property owner's real property record file and the assessed valuation placed upon the property for the upcoming assessment year." The hearing record is not clear as to what information was actually provided to the Taxpayer at the informal meetings held for tax year 2015: Mr. Bowman testified that he received only a single sheet of paper (which was not offered into evidence), but Ms. Larson testified that the County Assessor's office provided taxpayers with a multiple-page Property Record File at the meetings.

<sup>25</sup> The Commission notes that even if the Taxpayer were correct regarding the assertion that a due process violation must result in a reversion of the taxable value to the prior years' values, the Taxpayer would get no relief in these appeals since the prior years' assessed values were the same as they were in tax year 2015 for both Subject Properties. See, Exhibit 3:8 and Exhibit 4:8.

The Commission finds there is no merit in this due process argument, since the Taxpayer subsequently had both the opportunity for a protest hearing before the County Board and a de novo review of the valuation and equalization of the Subject Property before the Commission.<sup>26</sup>

The existing case law relating to the voiding of assessments relates to situations in which property valuations were increased without notice, thus depriving a taxpayer of the opportunity to be heard by the appropriate county board of equalization on the validity of the increase. These cases pre-date the establishment of this Commission; under the present statutory scheme, a petition or appeal to the Commission is the remedy for a defect in notice.<sup>27</sup> In the present case, the property valuation was not increased, and the Taxpayer received timely notice of the (unchanged) valuation. Even assuming that the County Assessor failed to provide required documents to the Taxpayer at the in-person meeting, the Taxpayer subsequently had the opportunity for a protest hearing before the County Board and a de novo review of the valuation and equalization of the Subject Properties before the Commission. The Commission is unaware of any authority, and the Taxpayer cites none, in which an assessment is void due to lack of notice under those circumstances. Moreover, because the valuations did not increase from the previous tax year, granting the relief requested by the Taxpayer (*i.e.*, restoring the 2014 valuation) would have no effect on the valuation of the property for tax year 2015.<sup>28</sup> The Commission finds no merit in the Taxpayer's due process argument in the present case.

The issue under consideration in this appeal is the actual value of the Subject Property. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.<sup>29</sup> When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under

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<sup>26</sup> As noted above, the appellate review conducted by the Commission is a de novo review. See Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.). “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).

<sup>27</sup> See *Cain v. Custer Cty. Bd. of Equal.*, 291 Neb. 730 at 743-745, 868 N.W.2d 334 at 344-346 (2015). See also, Neb. Rev. Stat. §77-1507.01 (Reissue 2009).

<sup>28</sup> See Footnote 25.

<sup>29</sup> *Id.*

Nebraska law.<sup>30</sup> A corporate officer or president is qualified to testify as to value of corporate property when he or she is shown to be familiar with the property and have a knowledge of values generally in the vicinity.<sup>31</sup>

Although Mr. Dingman pointed out negative conditions that he asserted would affect the market value of the Subject Property, he did not quantify the impact of those conditions on the Subject Property's market value. Mr. Dingman testified that he was unfamiliar with land values in the vicinity. His testimony was inconsistent as to the accuracy of the values asserted by Mr. Bowman, and when asked directly about his own opinion of value, he characterized his opinion as a "guess."

Mr. Bowman is neither an owner of the property nor a licensed appraiser. His estimates of value were developed by averaging the assessed value per-square-foot of three properties that were substantially dissimilar to the Subject Properties in size, age, and quality. His analysis of the property value did not conform to professionally accepted mass appraisal methods or standards, he did not perform a sales comparison, income, or cost analysis, and his conclusion with respect to market value bears no indicia of reliability. Nor is the comparison of dissimilar properties on the basis of assessed value per-square-foot an effective equalization technique when there are substantial differences between the alleged comparable properties and the Subject Property. It follows that Mr. Bowman's opinions regarding the value of the Subject Property had little probative value, and the Commission gives it little weight in deciding this appeal.

Ms. Larson is a licensed appraiser, but she had not performed an interior inspection of the Subject Properties, and could not testify as to when such an inspection might have taken place. Otherwise, her testimony tended to support the valuation determined by the County Board. She testified, for example, that the flooding on the Saddle Creek property was reflected in a land value that was set significantly lower than normal for the neighborhood, and that the repurposing of the 144th Street property was reflected in its quality and condition ratings.

As discussed above, valuation appeals before the Commission begin with the presumption that the County Board has faithfully performed its official duties in making an assessment and

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<sup>30</sup> *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>31</sup> *Kohl's Dept. Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb.App. 809, 638 N.W.2d 877 (2002).



has acted upon sufficient competent evidence to justify its action, and the Taxpayer has the burden of producing competent evidence to the contrary. Although the Taxpayer did introduce some evidence of conditions on the Subject Properties that could negatively affect the market value, it did not quantify the impact of these conditions on the properties' market value. The Nebraska Supreme Court has held that, in the absence of evidence through use of comparable sales or another assessment method showing how negative conditions affected the value of the property, and to what dollar amount, the taxpayer failed to meet its burden to overcome the presumption that the board of equalization acted reasonably.<sup>32</sup>

The Taxpayer failed to produce sufficient evidence that the actual valuation of the Subject Property, as determined by the County Board, is incorrect, and further failed to demonstrate, by clear and convincing evidence, that the County Board's decisions were arbitrary or unreasonable.

## **V. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Properties for tax year 2015 are affirmed.
2. The taxable value of the Subject Property in Case No. 15C 0806 for tax year 2015 is \$1,435,400.
3. The taxable value of the Subject Property in Case No. 15C 0807 for tax year 2015 is \$432,500.

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<sup>32</sup> *Firethorn Inv. v. Lancaster Cty. Bd. of Equal.*, 261 Neb. 231, 622 N.W.2d 605 (2001).

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2015.
8. This Decision and Order is effective for purposes of appeal on March 26, 2018.<sup>33</sup>

Signed and Sealed: March 26, 2018

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>33</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.