

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Omaha Ninety DST,
Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0545, 16C 0336,
17C 0495, & 18C 0369

Hillsborough West, LLC,
Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0549, 16C 0337,
17C 0494, & 18C 0370

Omaha Pharmacy DST,
Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0550, 16C 0338,
17C 0497, & 18C 0371

Sup Family III, LLC,
Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0551, 16C 0342,
17C 0491, & 18C 0374

SCP 2010 C-36035, LLC,
Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0552, 16C 0340,
17C 0493, & 18C 0373

Nebraska CVS Pharmacy, LLC,

Case Nos.: 15C 0553, 16C 0341,
17C 0496, & 18C 0375

Nebraska CVS Pharmacy, LLC,
Appellants,

Case Nos.: 15C 0554, 16C 0339,
17C 0492, & 18C 0372

v.

Douglas County Board of Equalization,
Appellee.

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

For the Appellant:

Christopher A. Stafford,
Fredrikson & Byron, P.A.

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

These appeals were heard before Commissioners James Kuhn and Steven Keetle.

I. THE SUBJECT PROPERTY

The Subject Property in Case Nos. 15C 0545, 16C 0336, 17C 0495, & 18C 0369 is a commercial parcel located at 1919 N 90th Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and the

property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 29, 30, 31, and 32 respectively.

The Subject Property in Case Nos. 15C 0549, 16C 0337, 17C 0494, & 18C 0370 is a commercial parcel located at 14460 W. Maple Road, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 33, 34, 35, and 36 respectively.

The Subject Property in Case Nos. 15C 0550, 16C 0338, 17C 0497, & 18C 0371 is a commercial parcel located at 4840 Dodge Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 37, 38, 39, and 40 respectively.

The Subject Property in Case Nos. 15C 0551, 16C 0342, 17C 0491, & 18C 0374 is a commercial parcel located at 2609 S 132nd Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 41, 42, 43, and 44 respectively.

The Subject Property in Case Nos. 15C 0552, 16C 0340, 17C 0493, & 18C 0373 is a commercial parcel located at 10770 Fort Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 45, 46, 47, and 48 respectively.

The Subject Property in Case Nos. 15C 0553, 16C 0341, 17C 0496, & 18C 0375 is a commercial parcel located at 14303 U Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 28,794 square foot drug store. The legal description of the parcel and the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 49, 50, 51, and 52 respectively.

The Subject Property in Case Nos. 15C 0554, 16C 0339, 17C 0492, & 18C 0372 is a commercial parcel located at 8315 W. Center Road, Omaha, Douglas County, Nebraska. The parcel is improved with a 13,232 square foot drug store. The legal description of the parcel and

the property record cards for tax years 2015, 2016, 2017 and 2018 for the Subject Property are found at Exhibits 53, 54, 55, and 56 respectively.

II. PROCEDURAL HISTORY

In each of the appeals, the Douglas County Assessor (the County Assessor) determined the assessed value of a parcel of the Subject Property and the various entities that own the property (collectively, “the Taxpayer,” for purposes of this order) protested that determination to the Douglas County Board of Equalization (the County Board). The County Board then set the value of the Subject Properties following the protests by the Taxpayer. The following table summarizes the original determination by the County Assessor, the value requested by the Taxpayer, and the decision of the County Board in each appeal:

Case No.	Assessor	Taxpayer	County Board	Exhibits
15C 0545	\$2,851,400	\$925,750	\$2,851,400	E1, E29:14
16C 0336	\$2,523,200	\$925,750	\$2,523,200	E2, E30:13
17C 0495	\$2,523,200	\$925,750	\$2,523,200	E3, E31:13
18C 0369	\$2,523,200	\$925,750	\$2,523,200	E4, E32:12
15C 0549	\$3,614,000	\$925,750	\$3,614,000	E5, E33:13
16C 0337	\$2,803,500	\$925,750	\$2,803,500	E6, E34:12
17C 0494	\$2,803,500	\$925,750	\$2,803,500	E7, E35:12
18C 0370	\$2,803,500	\$925,750	\$2,803,500	E8, E36:11
15C 0550	\$3,603,600	\$925,750	\$3,603,600	E9, E37:13
16C 0338	\$2,803,500	\$925,750	\$2,803,500	E10, E38:14
17C 0497	\$2,803,500	\$925,750	\$2,803,500	E11, E39:14
18C 0371	\$2,803,500	\$925,750	\$2,803,500	E12, E40:13
15C 0551	\$3,606,600	\$925,750	\$3,606,600	E13, E41:13
16C 0342	\$2,803,600	\$925,750	\$2,803,600	E14, E42:12
17C 0491	\$2,803,600	\$925,750	\$2,803,600	E15, E43:12
18C 0374	\$2,803,600		\$2,803,600	E16, E44:11
15C 0552	\$3,614,000	\$925,750	\$3,614,000	E17, E45:15
16C 0340	\$2,803,600	\$925,750	\$2,803,600	E18, E46:13
17C 0493	\$2,803,600	\$925,750	\$2,803,600	E19, E47:13
18C 0373	\$2,803,600	\$925,750	\$2,803,600	E20, E48:12
15C 0553	\$3,789,700	\$925,750	\$3,789,700	E21, E49:13
16C 0341	\$3,789,600	\$925,750	\$3,789,600	E22, E50:12
17C 0496	\$3,789,600	\$925,750	\$3,789,600	E23, E51:12
18C 0375	\$3,789,600	\$925,750	\$3,789,600	E24, E52:13

Case No.	Assessor	Taxpayer	County Board	Exhibits
15C 0554	\$2,857,200	\$925,750	\$2,857,200	E25, E53:13
16C 0339	\$2,523,200	\$925,750	\$2,523,200	E26, E54:11
17C 0492	\$2,523,200	\$925,750	\$2,523,200	E27, E55:11
18C 0372	\$2,523,200	\$925,750	\$2,523,200	E28, E56:11

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on February 25, 2019. 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 1-99.

III. STANDARD OF REVIEW

The Commission’s review of a determination by a county board of equalization is de novo.¹ 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.”²

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.³

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.⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁵

¹ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

² *Brenner* at 283, 811.

³ *Id.*

⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁶ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes the County Board’s valuation was unreasonable or arbitrary.⁷

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.”⁸ 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.”⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

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.¹¹

“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.”¹² “Actual value, market value, and fair

⁶ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁷ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

⁸ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹² *Id.*

market value mean exactly the same thing.”¹³ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

B. Summary of the Evidence

Two witnesses testified at the hearing: Linda Rowe and David Wellsandt. Ms. Rowe is the commercial real estate manager for the County Assessor and is responsible for the appraisal of retail stores including the Subject Property. She holds a State Assessor’s certificate, but she is not a licensed appraiser. Ms. Rowe testified about the methodology used in the assessments. David Wellsandt, MAI,¹⁷ is a Certified General Real Property Appraiser in Nebraska and Iowa. Mr. Wellsandt performed fee appraisals of each of the Subject Properties for tax years 2013, 2014, 2016, 2017 and 2018, and certified that those appraisals were performed according to professional standards.¹⁸ He has performed appraisals of many retail properties, including appraisals of freestanding retail establishments and properties with national credit tenants in the Douglas County market. Mr. Wellsandt did not perform a fee appraisal of the Subject Properties for the 2015 tax year. Mr. Wellsandt conjectured that the market value of the Subject Properties for tax year 2015 would be between the 2014 and 2016 value determinations from his appraisal reports.

When determining the assessed values of the Subject Properties, Ms. Rowe and Mr. Wellsandt undertook different types of appraisal or assessment work. Ms. Rowe was performing mass appraisal while Mr. Wellsandt undertook single-property appraisals.

Mass appraisal is the systematic appraisal of groups of properties as of a given date using standardized procedures and statistical testing. Single-property appraisal is the valuation of a particular property as of a given date. Mass

¹³ *Omaha Country Club* at 180, 829.

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ The MAI designation is the highest designation given by the Appraisal Institute.

¹⁸ Exhibits 57 through 70. Due to the large amount of similar information in the record, the Commission will primarily discuss the exhibits that apply to the property located at 4840 Dodge Street (Exhibit 62), which is the parcel primarily discussed by Mr. Wellsandt at the hearing before the Commission. The analysis of the evidence applicable to this property would apply to all of the other Subject Properties, because Mr. Wellsandt testified that he applied the same methodology to each of the Subject Properties for each tax year.

appraisal and single-property appraisal differ in their handling of market analysis and quality control, but they have similar valuation steps and are based on the same principles: supply and demand, highest and best use, anticipation, balance, change, competition, contribution, substitution, surplus productivity and variable proportions.¹⁹

While the types of appraisal are different, both Ms. Rowe and Mr. Wellsandt are utilizing professionally accepted techniques and methodologies.

The parties disagree as to which properties are appropriate comparable properties (sometimes referred to as “comparables”) to use in valuing the Subject Properties. The County Assessor and Ms. Rowe utilized comparable properties to establish market rents and develop an income approach model to value commercial properties located in Douglas County. They then reviewed comparable sales to “calibrate” this model, which was utilized to value the Subject Properties and other commercial properties in the county. Mr. Wellsandt utilized two different sets of comparable properties: a set of sales comparables for a sales comparison approach to value, and a different set of rent comparables to determine market rents for an income approach to value. Mr. Wellsandt then reconciled the values indicated by these two approaches to determine a final opinion of value for the Subject Properties.

The County Assessor based its 2015 assessments on an income model created in 2014, which Ms. Rowe did not prepare. Based on information received in protests filed for the 2015 assessment year, other information concerning assessment practice, and market information for the Douglas County market, Ms. Rowe determined that the income model should be revised. The revised model was used for the 2016 assessments and that value was carried forward for 2017 and 2018. Ms. Rowe prepared the mass appraisal analysis under which each of the Subject Properties was assessed for tax years 2016-2018. This assessment process included performance of an income approach analysis and a review of comparable sales to calibrate the model and to ensure equalization. The various rates used for all of the Subject Properties²⁰ were based in part on the location of the property and the investment grade class of the property as defined by a Benchmark Analysis and Capitalization Rate Study prepared for Douglas County by Kevin S. Kroeger, MAI, a Certified General Real Property Appraiser.²¹ The rates utilized in the 2016

¹⁹ Mass Appraisal of Real Property, International Association of Assessing Officers (1999) p. 1.

²⁰ The income approach to valuation operates by calculating the annual revenue for a commercial property, subtracting costs and expenses to arrive at stabilized net operating income, and then dividing by a capitalization rate to determine market value.

²¹ Exhibit 99.

assessment model were influenced by information Ms. Rowe acquired from a variety of sources, including material presented to the Board of Equalization, sellers, taxpayers, real estate agents, appraisers, and appraisals. The Subject Properties, with the exception of 14303 U Street, are Class A retail properties, which for this analysis means:

These buildings are typically in the best location and feature best quality materials and workmanship throughout. These properties are newer construction, or older properties which have received significant updates/remodeling. Buildings typically have high quality standard finishes, state of the art systems, exceptional accessibility, and a definite market presence. These facilities receive above average maintenance and professional management.²²

Ms. Rowe didn't utilize the rental rates for properties occupied by either CVS or Walgreens in her income model because those rental rates were influence by the leases. Ms. Rowe used rental rates for Class A retail properties occupied by national tenants.²³ The rent comparables presented by the County Board have a range of rents from \$20.90 to \$28.00 per square foot.²⁴

The rental rates and capitalization rates utilized by the County Assessor for the 2015 assessment model are set forth below:

Address	Rental Rate	Cap Rate	Exhibit
1919 N 90 th	\$21	8.5%	29:7
14464 W Maple	\$25	8.0%	33:7
4840 Dodge	\$25	8.0%	37:6
2609 S 132 nd	\$25	8.0%	41:7
10770 Fort	\$25	8.0%	45:8
14303 U	\$16	8.5%	49:6
8315 W Center	\$21	8.5%	53:7

The rental rates and capitalization rates utilized by the Ms. Rowe for the 2016 assessment model are set forth below:

Address	Rental Rate	Cap Rate	Exhibit
1919 N 90 th	\$18	8.25%	30:7
14464 W Maple	\$20	8.25%	34:7
4840 Dodge	\$20	8.25%	38:7
2609 S 132 nd	\$20	8.25%	42:7

²² Exhibit 99:21. These *investment* classifications should not be confused with *construction* classifications, which are also listed throughout the exhibits as Class C, Class D, etc. For purposes of this order, the designation "Class X" will refer to the investment class rather than the construction class unless otherwise indicated.

²³ E98.

²⁴ E98:1.

Address	Rental Rate	Cap Rate	Exhibit
10770 Fort	\$20	8.25%	46:7
14303 U	\$16	8.50%	50:6
8315 W Center	\$18	8.25%	54:6

The County Assessor used a vacancy and collection loss rate of 5% and an expense rate of 8% to determine the value for all of the Subject Properties in each tax year.²⁵ The County Board relied on the income approach to valuation as set forth on the Commercial Income Worksheet found in each of the Property Record Files (PRF).²⁶ Ms. Rowe looked at sales and rent information for comparable commercial properties as well as specifically looking at this information for drug stores.²⁷ The County Assessor used sales of comparable commercial properties to calibrate the income model. The sales of the properties most comparable to the Subject Properties were influenced by the leases associated with those properties, but Ms. Rowe applied an adjustment to those sales to account for the value of the leases. The County Board presented an analysis of assessed drug store values to demonstrate equalization and sales information.²⁸ Additionally, the County Board presented information regarding sales of drug store properties that occurred during the applicable time frame to be considered for each tax year before the Commission, as well as a number of retail sales and rent comparables.²⁹

The Taxpayer alleges that the comparable information provided by the County Board is insufficient for the Commission to rely on. All but seven of the sales on the Rent Comparables spreadsheet presented by the County Board are either CVS or Walgreens properties that Ms. Rowe testified weren't used in the County Assessor's model.³⁰ Of the remaining seven rent comparables, PRFs were only offered for three of the properties; the remaining four are listed as "confidential" on the spreadsheet. While the collection of confidential information in this matter by assessment officials is standard practice in the mass appraisal of commercial property, it

²⁵ See, for example, E38:7.

²⁶ See, for example, E38:7. As noted above, the Commission will focus on the exhibits that apply to the property located at 4840 Dodge Street (Exhibits 37, 38, 39, and 40). The analysis of the evidence applicable to this property would apply to all of the other Subject Properties because Ms. Rowe testified that the same methodology was applied to all of the Subject Properties. The PRF for each of the Subject Properties for each of the tax years in question which may be found at Exhibits 29 through 56. The County Board's valuation for each of the Subject Properties remained the same for tax years 2016 through 2018, and the Commercial Income Worksheet for these Subject Properties will be the same in the PRF for each of the tax years 2016, 2017, and 2018.

²⁷ See, E98.

²⁸ E86.

²⁹ E93-99.

³⁰ E98:1.

severely limits the Commission's ability to review the County Assessor's methodology. The rent comparables and comparable sales used by the County Assessor to calibrate its income model were Class A retail properties with national tenants.

Mr. Wellsandt's appraisal reports indicate that he considered all three approved approaches to property valuation in conducting his appraisals, but he concluded that the cost approach should not be considered because in the Subject Properties' market most properties have costs that exceed the market value of the fee simple estate, requiring significant adjustments for external obsolescence.³¹ Mr. Wellsandt's determinations of value therefore relied on the sales comparison and income approaches to value.

Mr. Wellsandt indicated that the Subject Properties were net lease, single tenant, free standing properties. The appraisal reports demonstrate that Mr. Wellsandt was concerned with the impact of the net lease market on the value of the Subject Properties, including net lease sales, sale/leaseback transactions, or build to suit transactions.³² In his testimony and analysis, Mr. Wellsandt acknowledged that sales of comparable properties, including sales of some of the Subject Properties, took place during the study period. He felt these sales were influenced by the leases associated with the properties and therefore he ignored those sales rather than make adjustments to account for the value of the leases. Mr. Wellsandt did not use any sale/leaseback or build to suit transactions as comparables in the appraisals of the Subject Properties as, in his opinion, he could not separate out the value of the lease from the value of the real property.

When finding sales comparables, Mr. Wellsandt focused primarily on free standing, owner occupied retail properties. All of the sales comparables except one were owner occupied sales, and the remaining lease on the non-owner occupied sale was minimal and would, in Mr. Wellsandt's opinion, have very little impact on the purchase price. Before the sales, Mr. Wellsandt's sales comparables were used as three restaurants, a small strip center, a video store, a bookstore, a discount wholesaler, and a tattoo parlor. After the sales, Mr. Wellsandt's sales comparables were used as a multi-tenant video store and restaurant, a salon, an animal hospital, a chiropractic clinic, a discount wholesaler, a bookstore, empty retail space, and a multi-tenant retail store and restaurant. Three of the sales comparables contained space leased either as separate restaurant space or as individual salon spaces. When asked if there were any sales of

³¹ E62:105.

³² See, E62:51-52.

pharmacy properties not influenced by a lease, Mr. Wellsandt testified that there were sales of U-Save pharmacy properties but he eliminated them due to their high sales prices, small square footage, and relatively large lot size.

The appraisal report makes significant adjustments to each of the sales comparables. After reviewing the sales and current listings of properties in the market, then making adjustments for the different tax years reviewed, the appraisal report arrived at a value indicated by the Sales Comparison approach for each of the Subject Properties as listed below:

Address	2016	2017	2018	Exhibit
1919 N 90 th	\$2,000,000	\$2,090,000	\$2,190,000	58:104
14464 W Maple	\$2,150,000	\$2,260,000	\$2,360,000	60:104
4840 Dodge	\$2,170,000	\$2,260,000	\$2,380,000	62:105
2609 S 132 nd	\$2,380,000	\$2,440,000	\$2,600,000	64:105
10770 Fort	\$1,980,000	\$2,070,000	\$2,170,000	66:104
14303 U	\$3,420,000	\$3,550,000	\$3,720,000	68:105
8315 W Center	\$2,170,000	\$2,280,000	\$2,380,000	70:104

The County Board argues that that the sales comparables utilized by Mr. Wellsandt were not comparable to the Subject Properties. The comparables used in the appraisal were Class D retail properties: much older, needing remodeling, with poor locations, and reaching the end of their economic lives. Ms. Rowe testified that all of the Wellsandt sales comparables would be valued by the County Assessor using different assessment models than the model applied to the Subject Property. Ms. Rowe further testified that the locations of Mr. Wellsandt’s sales comparables were not comparable to the Subject Properties’ locations, the comparables being located in lower visibility areas with less robust commercial activity.

For the income capitalization approach to value performed for the appraisals, Mr. Wellsandt selected six properties as rent comparables, focusing primarily on the size of the leased square footage being close to the size of the Subject Properties. Only one of the rent comparables is a free standing retail building; the rest are space in larger multi-tenant properties. Mr. Wellsandt again made significant adjustments to the rental rates of each of the rent comparables based on their characteristics. Mr. Wellsandt testified that he also looked to rental listings in the Omaha Metro area to determine the market rent for comparable properties. After reviewing the rent comparables and current listings of properties in the market, then making adjustments for the

different tax years, Mr. Wellsandt determined the following rental rates for the Subject Properties:

Address	2016	2017	2018	Exhibit
1919 N 90 th	\$12.90	\$13.10	\$13.20	58:97
14464 W Maple	\$14.20	\$14.40	\$14.45	60:97
4840 Dodge	\$14.30	\$14.45	\$14.60	62:98
2609 S 132 nd	\$15.25	\$15.50	\$15.75	64:98
10770 Fort	\$12.80	\$13.00	\$13.10	66:97
14303 U	\$10.00	\$10.10	\$10.20	68:98
8315 W Center	\$14.30	\$14.50	\$14.65	70:97

Mr. Wellsandt utilized a rounded 5% vacancy and collection loss rate and itemized expenses using a combination of percentages and per square foot costs for management, administrative, insurance, utilities, and maintenance and repairs to arrive at expense rates between 16% and 19%.

Reviewing market capitalization rates and survey data Mr. Wellsandt determined the following capitalization rates:

Address	2016	2017	2018	Exhibit
1919 N 90 th	8.11%	7.86%	8.11%	58:101-103
14464 W Maple	8.21%	7.97%	8.11%	60:101-103
4840 Dodge	8.11%	7.86%	8.11%	62:102-104
2609 S 132 nd	8.21%	7.97%	8.22%	64:102-104
10770 Fort	8.11%	7.86%	8.11%	66:101-103
14303 U	8.57%	8.21%	8.47%	68:102-104
8315 W Center	8.22%	7.97%	8.34%	70:101-103

Using the above data Mr. Wellsandt determined an income approach value for each property as follows:

Address	2016	2017	2018	Exhibit
1919 N 90 th	\$1,950,000	\$2,050,000	\$2,000,000	58:104
14464 W Maple	\$1,990,000	\$2,080,000	\$2,210,000	60:104
4840 Dodge	\$2,170,000	\$2,260,000	\$2,220,000	62:105
2609 S 132 nd	\$2,140,000	\$2,250,000	\$2,210,000	64:105
10770 Fort	\$1,940,000	\$2,030,000	\$1,980,000	66:104
14303 U	\$2,660,000	\$3,020,000	\$2,960,000	68:105
8315 W Center	\$2,000,000	\$2,100,000	\$1,890,000	70:104

The County Board argues that that the rent comparables utilized by Mr. Wellsandt were not comparable to the Subject Properties. The comparables used in the appraisal were Class D retail properties, rented portions of larger retail properties rather than free standing retail property, much older, needing remodeling, with poor locations, and reaching the end of their economic lives. Ms. Rowe testified that the locations of Mr. Wellsandt’s rent comparables were not comparable to the Subject Properties, being located in lower visibility areas with less robust commercial activity.

Mr. Wellsandt acknowledged that it was difficult to find truly comparable properties, and as a result, data for both the Sales Comparison and Income Capitalization approaches were limited. Mr. Wellsandt determined both approaches had similar shortcomings and gave them similar weight, arriving at the following reconciled or final determinations of value:

Address	2016	2017	2018	Exhibit
1919 N 90 th	\$1,980,000	\$2,070,000	\$2,100,000	58:105
14464 W Maple	\$2,070,000	\$2,170,000	\$2,290,000	60:105
4840 Dodge	\$2,170,000	\$2,260,000	\$2,300,000	62:106
2609 S 132 nd	\$2,260,000	\$2,350,000	\$2,410,000	64:106
10770 Fort	\$1,960,000	\$2,050,000	\$2,080,000	66:105
14303 U	\$3,040,000	\$3,290,000	\$3,340,000	68:106
8315 W Center	\$2,090,000	\$2,190,000	\$2,140,000	70:105

The property located at 14360 U Street³³ has an extra bay consisting of unfinished office space and is in not located on a corner. This property is located in a slower retail location, and is older than the other Subject Properties. Mr. Wellsandt testified that he and Ms. Rowe determined a similar “premium” difference between the property on 14303 U Street and the other Subject Properties for the cap rate and the rental rates when compared to the other Subject Properties.

In valuation appeals to the Commission, a presumption exists that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its actions.³⁴ The presumption disappears when

³³ Case Nos. 15C 0553, 16C 0341, 17C 0496, 18C 0376.

³⁴ See Neb. Rev. Stat. § 77-5016(9); *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013); *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) note 7 (citing *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

competent evidence to the contrary is presented.³⁵ 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 Nebraska law.³⁶ In the present appeals, the Taxpayer offered appraisals by an independent appraiser certified as being performed according to professional standards for tax years 2016, 2017 and 2018, and has overcome the presumption in favor of the determination of the County Board. Ms. Rowe testified that she created a new income model for the 2016 tax year because she felt the 2015 tax year assessments for drug stores were high when compared to other Class A retail stores in Douglas County. The Taxpayer argues that this testimony is sufficient to rebut the presumption in favor of the determination of the County Board for tax year 2015, and we agree.

Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence, with the burden of proof resting on the taxpayer.³⁷ 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.³⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.³⁹ The taxpayer's burden to show the valuation to be unreasonable is not met by showing a mere difference of opinion. Rather, the taxpayer must establish the valuation placed upon the property when compared with valuations placed on other similar property is grossly excessive and is a result of arbitrary or unreasonable action and not mere errors of judgment.⁴⁰

Both the County Board and Mr. Wellsandt placed significant weight on the income approach to value. The capitalization rates and vacancy rates utilized by Ms. Rowe and Mr. Wellsandt were similar. Both Mr. Wellsandt and Ms. Rowe testified that the primary differences between their respective income approach analysis was the selection of market rent.

To determine the market rents, Mr. Wellsandt utilized six rent comparables while the County Board offered supporting information for only three of its comparables. Mr. Wellsandt's rent

³⁵ *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013), note 34.

³⁶ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

³⁷ See *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

³⁸ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

³⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁴⁰ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447, (2013).

comparables required significant adjustments due to the differences between them and the Subject Properties and resulted in rental rates between \$10.00 and \$15.75. The County Board's rent comparables required less adjustment, indicating a determination by the Ms. Rowe that they were more comparable to the Subject Properties, and resulted in rental rates between \$16 and \$20. The Benchmark Analysis and Capitalization Rate Study prepared for the Douglas County Assessor and presented by the Taxpayer indicates that the benchmark rent for Class A retail properties is between \$17 and \$20, while Class B would be between \$13 and \$15 and Class C would be between \$10 and \$12.⁴¹

The amount for expenses was also significantly different. Ms. Rowe utilized expenses of 8% for all of the Subject Properties while Mr. Wellsandt's itemized expenses resulted in much higher expense ratios of between 16% and 19%. Looking again to the Benchmark Analysis, the benchmark expense ratio for Class A retail properties is between 7% and 9%, while Class B would be between 8% and 10%, Class C would be between 9% and 12%, Class D would be between 10% and 15%, and Class E would be between 10% and 12%.⁴²

The appraisal of real estate is not an exact science.⁴³ The County Assessor and Mr. Wellsandt took different approaches to determining appropriate comparable properties and making adjustments to those comparable properties, resulting in different values. The County Board and the Taxpayer both raised legitimate concerns with the methodology of the other. The appraisal of the Subject Properties is particularly difficult because both parties agree that the sales and leases of CVS pharmacies and Walgreens pharmacies, which are otherwise highly comparable, are impacted by factors beyond the real property and therefore are not reliable indicators of value on their own.

The Commission finds that, based on all of the evidence presented, the Taxpayer has not demonstrated by clear and convincing evidence that the action of the County Board in relying on Ms. Rowe's methodology was unreasonable or arbitrary. For tax year 2015, the record demonstrates that the assessed value determination utilized an appraisal model different than that prepared by Ms. Rowe. However, the Taxpayer did not present evidence of value for 2015, but rather, it requested that the Commission split the difference between appraisals performed for 2014 and 2016. Because the Commission has determined not to rely on the value presented in the

⁴¹ E99:4.

⁴² E99:29.

⁴³ *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

2016 appraisal report, the Commission will not determine a value for the 2015 tax year based on that value.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However, the Commission further 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 taxable value of the Subject Property for tax years 2015, 2016, 2017 and 2018 are affirmed.⁴⁴
2. The taxable values of the Subject Properties for tax years 2015, 2016, 2017 and 2018 are as follows:

Case No.	Assessed Value
15C 0545	\$2,851,400
16C 0336	\$2,523,200
17C 0495	\$2,523,200
18C 0369	\$2,523,200
15C 0549	\$3,614,000
16C 0337	\$2,803,500
17C 0494	\$2,803,500
18C 0370	\$2,803,500
15C 0550	\$3,603,600
16C 0338	\$2,803,500
17C 0497	\$2,803,500
18C 0371	\$2,803,500
15C 0551	\$3,606,600
16C 0342	\$2,803,600

⁴⁴ Taxable value, as determined by the County Board, was based upon the evidence at the time of the protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

Case No.	Assessed Value
17C 0491	\$2,803,600
18C 0374	\$2,803,600
15C 0552	\$3,614,000
16C 0340	\$2,803,600
17C 0493	\$2,803,600
18C 0373	\$2,803,600
15C 0553	\$3,789,700
16C 0341	\$3,789,600
17C 0496	\$3,789,600
18C 0375	\$3,789,600
15C 0554	\$2,857,200
16C 0339	\$2,523,200
17C 0492	\$2,523,200
18C 0372	\$2,523,200

3. 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 (Reissue 2018).
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 years 2015, 2016, 2017, and 2018.
7. This Decision and Order is effective for purposes of appeal on August 7, 2020.⁴⁵

Signed and Sealed: August 7, 2020

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴⁵ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.