

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Wright Street Holdings, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16C 0201

Decision and Order Reversing the
Determination of the Douglas County Board
of Equalization

Case Nos: 17C 0239 & 18C 0081

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

For the Appellant:

Thomas R. Brown,
Fitzgerald, Schorr,
Barnettler & Brennan, P.C

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Douglas County. The parcel is improved with a 53,442 square foot medical office building. The legal description of the parcel is found in the Property Record File at Exhibits 4-6.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$11,609,600 for tax year 2016. Wright Street Holdings, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$5,820,400. The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$11,609,600.¹

The County Assessor determined that the assessed value of the Subject Property was \$10,903,900 for tax year 2017. The Taxpayer protested this assessment to the County Board and

¹ Exhibit 1, Exhibit 4:11.

requested an assessed valuation of \$5,820,400. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$10,903,900.²

The County Assessor determined that the assessed value of the Subject Property was \$10,903,900 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$5,820,400. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$10,903,900.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on December 12, 2018. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged Exhibits 1 through 83. The Commission issued an order on December 14, 2018, holding the record open through January 31, 2019, to allow the parties to discuss resolution of these appeals and submit a Confession of Judgment if one could be reached. The parties did not submit a Confession of Judgment by the deadline and the Commission thereafter took this matter under advisement.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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."⁵

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

² Exhibit 2, Exhibit 5:12.

³ Exhibit 6:13, Exhibit 6:12. The County Board's decision in Exhibit 3 appears to include a typographical error in the total value.

⁴ 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).

⁵ *Brenner* at 283, 811.

showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

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.”¹¹ 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.”¹² The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

The Taxpayer alleged only that the valuation of the Subject Property was not equalized with other comparable properties and presented evidence and argument on that issue.

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. EQUALIZATION

A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by [the Nebraska] Constitution.”¹⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁵ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁶ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.¹⁷ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity.¹⁸ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁰ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”²¹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²²

B. Summary of the Evidence

The Subject Property is a 52,502 square foot medical office building located in west Omaha containing office space as well as specialized improvements for medical uses. The Taxpayer did

¹⁴ *Neb. Const.*, Art. VIII, § 1.

¹⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁶ *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

¹⁷ *Cabela's Inc.*

¹⁸ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁹ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁰ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²¹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²² *Id.* at 673, 94 N.W.2d at 50.

not dispute the characteristics of the Subject Property as listed in the Property Record File (PRF) maintained by the County Assessor, nor did the Taxpayer dispute that the assessed value of the Subject Property was its actual or fair market value. Rather, the Taxpayer alleged that the Subject Property was not being assessed uniformly and proportionally with other comparable properties.

The Taxpayer presented the testimony of Richard Secor, Jr., a real estate broker and partner with Cushman & Wakefield/The Lund Company, a large commercial real estate services firm. Mr. Secor presented two different analyses of the assessed values of several buildings for each of the three tax years in question. Mr. Secor did not make any determination of the market value of the Subject Property or any of the comparable properties. Mr. Secor testified that he utilized the information from the PRFs maintained by the County Assessor's office, but that his determination of "construction quality" of High Medium or Low for each property was his own determination based on age, quality of materials, and other factors.²³

The first analysis was done with buildings that both the Taxpayer and the County Board utilized as comparable medical office building properties.²⁴ Mr. Secor's tables broke out the assessed land value from the assessed improvement value and presented the per square foot values for each component as well as the total and the weighted average per square foot values for each tax year.²⁵ The first analysis did not adjust the values for any of the properties presented for differences in characteristics; for example, the per square foot values for Medium-High "construction quality" buildings were averaged in with the per square foot values of High quality buildings.

Mr. Secor described the properties in the second analysis as comparable properties the County Assessor's office provided. The table for the second analysis broke out the assessed land value from the assessed improvement value and presented the per square foot values for each component, as well as the total and the weighted average per square foot values for each tax year.²⁶ Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.²⁷ The second

²³ Exhibits 76, 78, and 80 (The Commission notes that Exhibits 8, 22 and 36 contain the same information as 76, 78, and 80 without the weighted average information).

²⁴ Exhibits 76:1, 78:1, and 80:1. (An analysis of the same properties are presented in the County Board's Exhibits 70, 71 & 74).

²⁵ Exhibits 76:1, 78:1, and 80:1.

²⁶ Exhibits 76:2, 78:2, and 80:2.

²⁷ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

analysis includes dental offices, a minor medical clinic, a wellness center, administrative offices with no medical space, a real estate office, and a veterinary office.²⁸ The majority of the properties used in the second analysis vary significantly in size, characteristics, and location from the Subject Property. The second analysis did not adjust the values for any of the properties presented for differences in characteristics; for example, the per square foot values for properties for Low, or Medium-High “construction quality” buildings were averaged in with the per square foot values of High quality buildings. Based on the exhibits and testimony presented, the Commission finds the majority of the properties used in the second analysis for each tax year not comparable to the Subject Property.

The Taxpayer presented a summary of the weighted average value per square foot for both analyses done by Mr. Secor. Mr. Secor testified that he could not determine the basis for the differences in per square foot value for improvements classified as medical office buildings in either of his analyses. Mr. Secor testified that, in his opinion, the per square foot value of the Subject Property was not equalized with the per square foot value of other comparable properties for each of the tax years at issue.

Mr. Secor’s first and second analyses were each a presentation of the average assessed values of other properties, and the weighted average per square foot value of the improvement components. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.²⁹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer’s approach is a professionally accepted mass or fee appraisal approach. The weight of authority is that assessed value is not in and of itself direct evidence of actual value.³⁰ Additionally, “[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments,”³¹ particularly when the Subject Property has a higher quality of construction and condition rating than the other properties used in the analysis. Mr. Secor

²⁸ See Exhibits 76:2, 78:2, and 80:2

²⁹ See Neb. Rev. Stat. § 77-112 (Reissue 2018).

³⁰ See *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

³¹ *The Appraisal of Real Estate*, Appraisal Institute, at 308 (13th ed. 2008).

testified that, when determining value of a property, he would typically utilize the income approach or comparable sales approach to value, both accepted approaches for determining the actual value of the Subject Property as defined by statute. Mr. Secor testified that he did not have sufficient market, lease, or sales information to perform either of those approaches to value.

The Commission finds and determines that the testimony and analysis of Mr. Secor presented did not demonstrate that the Subject Property was not being assessed uniformly and proportionally with other comparable properties.

Micaela Larsen, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office, also testified at the hearing. Ms. Larsen is a licensed appraiser in Nebraska. She is responsible for the appraising of medical office buildings in Douglas County, and she collected the data utilized to create the appraisal model used to value medical office buildings such as the Subject Property. Ms. Larsen testified that, in her opinion, the assessed value of the Subject Property was not equalized with other comparable properties for the 2016 tax year, but that it was equalized for 2017 and 2018. Ms. Larsen produced a table containing information from the Property Record File (PRF) as well as her notes for 12 parcels of property, 11 of which contained medical office buildings.³²

For tax year 2016 all but one of the properties have notes that indicate that the assessed values were set based on administrative determinations of either the County Board or the Commission, mostly for prior tax years, and carried forward to 2016. Ms. Larson testified that she was unable to determine the basis of these values and that, in her opinion, they were not equalized values. When questioned, Ms. Larson testified that she was unable to give an opinion of the equalized value for the Subject Property for tax year 2016 based on the information in the record, but she did state that applying a per square foot value from a property with a different condition rating would not be appropriate.

For the 2017 tax year, all medical office buildings in Douglas County were reassessed using an income approach model to determine value. Data was collected to determine market rental rates, market expense rates, market vacancy rates, and market capitalization rates and models were applied to medical office buildings based on their condition rating. A condition rating of very good in the County Assessor's model for medical office buildings indicated that a property contained specialized improvements for medical uses. Ms. Larson testified that the assessment of

³² Exhibits 70, 71, 74.

a medical office building with a condition rating of very good would be different than the assessment of a medical office building with a condition rating of good. Ms. Larsen further testified that the County Assessor's income model used the net rentable space in a medical office building rather than the gross square footage to account for net rentable space. When the County Assessor was provided with the actual rent rolls, for a building actual rented square footage was used; when the County Assessor was not provided with the actual rent rolls, a standard percentage to account for unrented square footage was used.³³ Ms. Larsen testified that the value derived from the income model for medical office buildings in Douglas County was the market value for the entire property as an economic unit including both land and improvements. Ms. Larsen said that there is a requirement that the PRF list a separate land value and an improvement value. The County Assessor's office reassessed land values in parts of Douglas County, and based on that determination, a certain amount of value was allocated to the land component. Between 2017 and 2018, a new determination of land value was made, so that allocations of value to the land and improvement components of the Subject Property changed, but the total overall assessed value did not change.

Based on the record before it, the Commission finds that for tax years 2017 and 2018 the value determined by the County Board for the Subject Property was determined utilizing an income model that utilized professionally accepted mass appraisal methodology. This methodology was applied uniformly and proportionally to the Subject Property and its comparable properties. The per square foot value of net rentable space for all medical office buildings with a condition rating of very good was \$220 per square foot for each of these properties for tax year 2017 and 2018.³⁴

For tax year 2016, the Commission finds and determines that the value determined by the County Board for the Subject Property was not determined utilizing a valuation model that utilized professionally accepted mass appraisal methodology. The County was unable to explain how the 2016 assessments were determined and the property record files simply stated that the assessed values were reconciled values. Further, the Commission determines that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties. For the 2016 tax year, the table prepared by Ms. Larsen indicate that there were three

³³ Unrented square footage includes common areas, utility rooms for common utilities, and other unrentable space in a building

³⁴ Exhibits 71 & 74.

comparable medical office buildings with a condition rating of very good: the Subject Property, a property at 111 N 175th, and a property at 8005 Farnam. These properties were assessed at \$235, \$145, and \$141 per net rentable square foot respectively.³⁵ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³⁶ The record demonstrates that while the Subject Property is assessed at \$235 per net rentable square foot, a comparable property is assessed at \$141 per net rentable square foot. The Commission finds and determines that the Subject Property should be assessed at \$141 per net rentable square foot for the 2016 assessment, or a total valuation of \$6,979,500.³⁷

V. CONCLUSION

For tax year 2016, 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 determination. For tax year 2016, the Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. and that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. For tax years 2017 and 2018, 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 determination. For tax years 2017 and 2018 the Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above the 2016 decision of the County Board is vacated and reversed and the 2017 and 2018 appeals of the Taxpayer are denied.

³⁵ See Exhibit 70.

³⁶ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³⁷ 49,500 net rentable square feet x \$141 per net rentable square foot = \$6,979,500. While the Commission is able to determine the overall or total equalized value of the Subject Property the record before the commission does not demonstrate or allow the Commission to determine the allocation between land and improvements.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is reversed.
2. The taxable value of the Subject Property for tax year 2016 is: \$6,979,500.
3. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.
4. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 1,296,300
<u>Improvements:</u>	<u>\$ 9,607,600</u>
Total	\$10,903,900

5. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
6. The taxable value of the Subject Property for tax year 2018 is:

Land:	\$ 1,701,500
<u>Improvements:</u>	<u>\$ 9,202,400</u>
Total	\$10,903,900

7. 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).
8. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
9. Each party is to bear its own costs in this proceeding.
10. This Decision and Order shall only be applicable to tax years 2016, 2017 and 2018.

11. This Decision and Order is effective for purposes of appeal on February 26, 2020.³⁸

Signed and Sealed: February 26, 2020

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁸ 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.