

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

Parkview Manor, LLC,  
Appellant,

v.

Red Willow County Board of Equalization,  
Appellee.

Case Nos: 17C 0005, 17C 0006, 17C 0007,  
17C 0008, 17C 0009, 17C 0010, 17C 0011,  
17C 0012 & 17C 0013

Decision and Order Affirming the Decisions  
of the Red Willow County Board of  
Equalization

**For the Appellant:**

Timothy P. Brouillette,  
Brouillette, Dugan, Troshynski

**For the Appellee:**

Philip P. Lyons  
Deputy Red Willow County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property comprises nine commercial parcels located in Red Willow County. One parcel (17C 0005) is improved with a large home that has been converted to contain nine apartments as well as a residence for Thomas and Lois Beattie, who are members of Parkview Manor, LLC (the Taxpayer). The remaining eight parcels include both lots that are vacant or improved with parking facilities (17C 0006, 17C 0007, 17C 0011, 17C 0012), and lots improved with commercial buildings (17C 0008, 17C 0009, 17C 0010, 17C 0013); these eight are located in close proximity to one another. The legal descriptions and property record cards for the Subject Property are found at Exhibits 10:27, 11:35, 12:35, 13:44, 14:24, 15:26, 16:20, 17:22, and 18:42 (sequentially by case number).

**II. PROCEDURAL HISTORY**

The Red Willow County Assessor (County Assessor) determined assessed values for the Subject Property for tax year 2017. Parkview Manor, LLC (the Taxpayer) protested these assessments to the Red Willow County Board of Equalization (the County Board). The Red Willow County Board made a determination of value regarding each parcel. The total values

assessed by the County Assessor, requested on protest by the Taxpayer, and determined by the County Board are shown in the table below.<sup>1</sup>

<b>Case No.</b>	<b>Parcel ID</b>	<b>County Assessor</b>	<b>Taxpayer Protest</b>	<b>County Board</b>
17C 0005	000759600	\$232,000	\$197,433	\$232,000
17C 0006	000835200	\$9,829	\$4,914	\$9,829
17C 0007	000835300	\$4,704	\$1,680	\$4,704
17C 0008	000835400	\$117,000	\$46,080	\$117,000
17C 0009	000899800	\$97,000	\$72,000	\$97,000
17C 0010	000900000	\$220,000	\$150,000	\$220,000
17C 0011	000900100	\$14,400	\$7,200	\$14,400
17C 0012	000900200	\$48,128	\$28,191	\$48,128
17C 0013	000900300	\$84,000	\$75,960	\$84,000

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 18, 2018, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of Exhibits 1 through 25.

### **III. STANDARD OF REVIEW**

The Commission’s review of the determination by a County Board of Equalization is de novo.<sup>2</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>3</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

<sup>1</sup> Exhibits 1 through 9.

<sup>2</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). “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>3</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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>4</sup>

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>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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>7</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>8</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, and may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</sup> The Commission may also take notice of judicially cognizable facts as well as 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>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</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.

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<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</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 taxable value).

<sup>8</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

<sup>10</sup> Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

<sup>11</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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>12</sup>

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>13</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>14</sup> 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.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

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

Thomas Beattie and Lois Beattie, both members of Parkview Manor, LLC, testified on behalf of the Taxpayer. Mr. Beattie was a licensed real estate agent before his license expired in 2015. For each parcel of the Subject Property, Mr. Beattie testified to his opinion of value. However, for each parcel, his opinion was the same as the assessed value for tax year 2016, prior to increases for tax year 2017 (sometimes rounded). He did not discuss comparable properties or market factors, or provide any other quantifiable support for his opinion of value. Mrs. Beattie testified, for each parcel, that she shared her husband's opinion of value, but she offered no supporting details regarding the basis of her opinion.

Kristi Korell, the County Assessor, testified on behalf of the County Board. She has held the State Assessor's Certificate since beginning work in the County Assessor's office as a deputy in 1995.

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<sup>12</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180.

<sup>15</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>16</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>17</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

Case No. 17C 0005

The parcel in issue for 17C 0005 is an apartment house containing nine apartments and a residence where Mr. and Mrs. Beattie live. Approximately 50% of the total living area is the owner's residence; the nine apartments make up the remainder of the living area. The apartments average approximately 200 square feet apiece, and rents ranged from \$350 to \$450 per unit per month as of January 1, 2017. The building, which was originally purchased by the Beatties and subsequently transferred to the Taxpayer, has been updated several times during their ownership. The Taxpayer did not present any specific evidence as to why it considered this parcel to be overvalued.

Case Nos. 17C 0006, 17C 0007, and 17C 0008

The parcel in 17C 0008 contains a repair building used by the Taxpayer's tenants, Fritz Forage Harvesting (Fritz) and Federal Express (Fed. Ex.). Fritz uses its portion of the building for truck repair, and Fed Ex uses its portion to sort parcels for delivery. The parcels in 17C 0006 and 17C 0007 are parking lots used by Fritz for its trucks. All three parcels are adjacent to Highway 83, and the parcel in 17C 0006 is also adjacent to Highway 6 and Highway 34, called B Street within the town of McCook (B Street). The portion leased by Fed. Ex. rents for \$1,250 per month; Fritz's total lease is for \$2,000 per month, but that total includes lots that are not on appeal before the Commission. Because the parking lots are used to support the repair building, Mr. Beattie testified that he considers the three parcels to constitute a single economic or commercial unit, and that the parking lots, particularly the middle parcel, would be difficult to sell on their own. Ms. Korell testified that the County Assessor valued the 17C 0006 parcel adjacent to both Highway 83 and B Street at \$2 per square foot, whereas the 17C 0007 parcel was assessed at \$0.70 per square foot due to street access only from Highway 83.

Case No. 17C 0009

This parcel is improved with a building containing 24 storage units, which vary in size from 10x15 to 10x20 and rent for \$50 to \$65 per month depending upon size. Four of the units are occupied by the Taxpayer. The Taxpayer did not present any specific evidence as to why it considered this parcel to be overvalued.

Case Nos. 17C 0010 and 17C 0011

These parcels include a commercial building leased to CarQuest Auto Parts (17C 0010) and an adjacent parking lot (17C 0011), both of which have direct access to B Street. The parcels rent for a combined \$2,750 per month, and Mr. Beattie testified that he believes the parking lot parcel could not be sold independently of the parcel containing the building. Ms. Korell testified that the 17C 0011 parcel, like the 17C 0006 parcel, was valued at \$2 per square foot because it had direct access to B Street.

Case Nos. 17C 0012 and 17C 0013

These parcels contain a commercial building with parking space which was leased by Good Samaritan as of January 1, 2017 (17C 0013), and an area enclosed by a chain link fence, with spaces rented out for trailer storage (17C 0012). The parcels also contain a storage building owned and used by the Taxpayer, which appears to overlap both parcels. Both parcels are adjacent to B Street. The lease agreement with Good Samaritan indicates that rent on the parcel was \$1,500.<sup>18</sup> Ms. Korell testified that the portion of the 17C 0012 parcel abutting B Street was valued at \$2 per square foot, but the back portion of the parcel (approximately two-thirds of the total parcel) was valued at \$0.25 per square foot due to inferior access.

**C. Analysis**

As discussed above, we begin with the presumption that the County Board has performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. 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. The opinion of value of an owner who is familiar with the property and knows its worth can constitute competent evidence to rebut the presumption,<sup>19</sup> as can the opinion of a corporate officer who is shown to be familiar with the property and have a knowledge of values

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<sup>18</sup> Ex. 22:1.

<sup>19</sup> *U.S. Ecology v. Boyd Cty. Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

generally in the vicinity.<sup>20</sup> This principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it.<sup>21</sup>

Although the Taxpayer's witnesses appeared to be familiar with their own property and other property in the area, they provided no evidence such as sales of comparable parcels, analysis of market factors affecting the Subject Property, or independent appraisals supporting their opinions of value. The County Board, which is not required to present any evidence to support its valuation unless the Taxpayer establishes that its valuation was unreasonable or arbitrary, nonetheless provided evidence of comparable property values and testimony regarding valuation studies that supported the 2017 values for each parcel. Viewing the record as a whole, the Taxpayer did not present competent evidence to rebut the presumption in favor of the County Board's determination.

## 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 determination. 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 appeal of the Taxpayer should be denied and the decisions of the County Board should be affirmed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Red Willow County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 are affirmed.<sup>22</sup>
2. The taxable values of the Subject Property for tax year 2017 are as follows:

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<sup>20</sup> *Kohl's Department Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d 877 (2002).

<sup>21</sup> *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb 834, \_\_\_ N.W.2d \_\_\_ (2018).

<sup>22</sup> 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.

<b>Case No.</b>	<b>Parcel ID</b>	<b>Taxable Value</b>
17C 0005	000759600	\$232,000
17C 0006	000835200	\$9,829
17C 0007	000835300	\$4,704
17C 0008	000835400	\$117,000
17C 0009	000899800	\$97,000
17C 0010	000900000	\$220,000
17C 0011	000900100	\$14,400
17C 0012	000900200	\$48,128
17C 0013	000900300	\$84,000

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Red Willow County Treasurer and the Red Willow 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 2017.
7. This Decision and Order is effective for purposes of appeal on September 26, 2018.<sup>23</sup>

Signed and Sealed: September 26, 2018

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>23</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.