

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

FIRST NATIONAL BANK OF
OMAHA,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 17C 0478, 17C
0479, 17C 0480, 17C 0481, 18C
0404, 18C 0405, 18C 0406, 18C
0407, 19C 0324, 19C 0325, 19C
0326, 19C 0327, 20C 0293, 20C
0294, 20C 0295, 20C 0296, 21C
0990, 21C 0991, 21C 0992 &
21C 0993

**DECISION AND ORDER
REVERSING THE DECISIONS
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION**

For the Appellant:

Howard A. Roston,
Daniel P. Deveny,
Fredrikson & Byron PA

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Properties are four adjacent commercial parcels located in Omaha, Douglas County, Nebraska. The appeals are for tax years 2017, 2018, 2019, 2020, and 2021.¹

1. Parcel No. 0308130000 (the Main Bank), located at 1620 West Dodge Street, is improved with the First National Bank

¹ See Exhibit 108:38–39 (tax parcel maps).

of Omaha (FNBO) Main Bank Building. The legal description and Property Record File (PRF) for the five assessment years at issue are found at Exhibits 21, 23, 25, 92, and 106.

2. Parcel No. 0308200000 (the Double Tree Garage), located at 117 N. 16th Street, is improved with a multi-use parking garage. The legal description and PRF for the same five assessment years at issue are found at Exhibits 27, 29, 31, 96, and 102.
3. Parcel No. 1039982810 (the Park 7), located at 104 N. 15th Street, is improved with a parking garage. For the years at issue, FNBO owned only the underlying land and not the improvement. The parking garage was owned by the City of Omaha and is exempt from real property taxation.² The legal description and PRF for the five assessment years at issue are found at Exhibits 39, 41, 43, 98, and 104.
4. Parcel No. 0308190000 (the Access Road) is an unimproved parcel adjacent to the Main Bank, the Double Tree Garage, and another parcel owned by a third-party. The Access Road use is to provide access to the third-party parcel and both parking garages. The legal description and PRF for the five assessment years at issue are found at Exhibits 33, 35, 37, 94, and 100.

II. PROCEDURAL HISTORY

For each of the four parcels and in all five tax years, the Douglas County Assessor (the County Assessor) determined the assessed values, and FNBO protested the assessments to the Douglas County Board of Equalization (the County Board) requesting lower assessed values. The County Board determined the taxable values of the Subject Properties, adopting the County Assessor's valuations in all instances, as shown in the table below.

² See Neb. Const. art. VIII, § 2; see also 350 Neb. Admin. Code, ch. 40, § 002.03–03A (2013).

Subject Property	Property ID No.	Case Nos.	Tax Year	Land Value	Improvement Value	Total Value			
Main Bank 1620 Dodge St.	0308130000	17C 0478 18C 0407	2017 2018	\$1,267,200	\$24,480,600	\$25,747,800 ³			
		19C 0327 20C 0293	2019 2020	\$1,267,200	\$25,915,000	\$27,182,200 ⁴			
		21C 0993	2021	\$1,267,200	\$28,696,800	\$29,964,000 ⁵			
Double Tree Garage 117 N. 16 th St.	0308200000	17C 0479 18C 0405	2017 2018	\$1,267,200	\$4,670,900	\$5,938,100 ⁶			
		19C 0325 20C 0295	2019 2020						
		21C 0991	2021						
		17C 0481 18C 0404	2017 2018				\$1,271,400	\$0	\$1,271,400 ⁷
		19C 0326 20C 0296	2019 2020						
21C 0992	2021								
Access Road Lot 5	0308190000	17C 0480 18C 0406	2017 2018	\$384,000	\$0	\$384,000 ⁸			
		19C 0324 20C 0294	2019 2020						
		21C 0990	2021						

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission) asserting the Subject Properties were valued in excess of their actual value and the assessed values were not equalized with other properties in Douglas County. The Commission held a consolidated hearing on June 14-15, 2022. Prior to the hearing, the parties exchanged exhibits and

³ Exhibits 1–2.

⁴ Exhibits 3, 13.

⁵ Exhibit 20.

⁶ Exhibits 4–6, 15, 18.

⁷ Exhibits 10–12, 16, 19.

⁸ Exhibits 7–9, 14, 17.

submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1–187 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission’s review of the County Board’s determination is de novo.⁹ 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.¹⁰

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.¹¹

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.¹² Proof that the order, decision, determination, or action was

⁹ 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).

¹⁰ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹¹ *Id.*

¹² Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

unreasonable or arbitrary must be made by clear and convincing evidence.¹³

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁴ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹⁵

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.¹⁶ The Commission may take notice of judicially cognizable facts, 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.¹⁷ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁸

IV. RELEVANT 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

¹³ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ 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).

¹⁵ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁶ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.¹⁹

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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.²⁰ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²¹ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.²² All real property in Nebraska subject to taxation shall be assessed as of January 1.²³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁴

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.²⁵ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁶ 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

¹⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²¹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

²² Neb. Rev. Stat. § 77-131 (Reissue 2018).

²³ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁴ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²⁵ Neb. Const., art. VIII, § 1.

²⁶ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

a disproportionate part of the tax.²⁷ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²⁸ 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.²⁹ 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 the 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.³⁰ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³¹

V. FINDINGS OF FACT

A. Witness Testimony

Three witnesses were called by the Taxpayer and testified at the hearing: Bradley Braemer, an independent appraiser; Michaela Larsen, a Real Estate Specialist with the Commercial Division of the County Assessor; and Cynthia Jones, the Manager of the Real Estate Department of FNBO.

1. Testimony of Bradley Braemer

Bradley Braemer was a certified appraiser for Real Estate Analysis Corporation. He prepared three Appraisal Reports estimating the actual value of each Subject Property for each of the tax years at issue, with an effective date of January 1 of each year.³² Braemer held the

²⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²⁸ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁹ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³⁰ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

³¹ *Id.* at 673, 94 N.W.2d at 50.

³² Exhibit 108–110.

MAI designation from the Appraisal Institute, and was licensed in the states of Illinois, Iowa, and Michigan.³³ The Appraisal Reports were introduced by FNBO with no objection.

Each Appraisal Report was certified as being performed according to professionally approved methods of mass appraisal.³⁴ When an independent appraiser using professionally approved methods of mass appraisal certifies an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.³⁵ As a result, the Commission finds and determines the Appraisal Reports prepared by Braemer constitute competent evidence concerning the values of the Subject Property. Therefore, the presumption the County Board has acted upon sufficient competent evidence to justify its valuation is rebutted. Accordingly, the reasonableness of the valuation for the Subject Properties becomes one of fact based upon all the evidence presented.³⁶

Braemer inspected the properties on March 6, 2018, and April 24, 2018, in compiling his appraisal of the property for tax year 2017.³⁷ Thereafter, Braemer inspected the exterior of the property on January 29, 2020, for his appraisals for tax years 2018 and 2019. An additional inspection was conducted on April 22, 2022, for his tax year 2020 and 2021 appraisals.

For all his appraisals,³⁸ Braemer determined the four parcels should be valued as a single economic unit based upon his conclusion that in the market, these parcels would likely be sold together and because a market buyer would most likely purchase the properties as a group on the principal grounds that any buyer of the Main Bank would require the parking structures.

Braemer also testified that for each of his three appraisals found at

³³ Exhibit 108:177.

³⁴ Exhibit 108:173–74; 109:186–87; 110:191–92.

³⁵ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

³⁶ See *Brenner v. Banner County Bd. of Equal.*, *supra* Note 10.

³⁷ See Exhibit 108 at

³⁸ See Exhibits 108 (2017), 109 (2018 and 2019), and 110 (2020 and 2021).

Exhibits 108, 109, and 110, the form and content of the appraisals were substantially similar and neither the rentable square footage of the parcels nor the basic characteristics of the parcels substantially changed. Further, Braemer noted the main differences in the appraisal conclusions came down to aging of the improvements as well as access to more recent market data for each subsequent taxable year.

In preparing his appraisals, Braemer conducted an economic assessment of the commercial real estate market in the Omaha area.³⁹ He also completed a breakdown of each parcel, to include descriptions of the buildings, interior finishes, and rentable area for each improvement.⁴⁰ Braemer concluded that for each taxable year at issue the improvements were in average condition.

Braemer also conducted a highest-and-best-use analysis for the Subject Properties for each tax year at issue. He looked at the best use as vacant, as well as the best use as improved. As vacant, Braemer analyzed uses that were both physically possible and legally permissible.⁴¹ This included office, residential, and hotel uses. He also examined financial feasibility and maximum productivity. Braemer found that as vacant, the land component of the Subject Properties would be valued at \$45 per square foot of land area.⁴² Additionally, Braemer analyzed the highest and best use as improved, concluding the Subject Properties were being used at their highest and best use.⁴³

During the appraisals, Braemer considered two approaches to value, the income capitalization approach, and the sales comparison approach, to determine a final opinion of value for the Subject Properties for each of the taxable years. Both approaches are discussed in turn below.

³⁹ Exhibit 108:16-34; 109:17-34; 110:50-61.

⁴⁰ Exhibit 108:58-62; 109:58-68; 110:44-49.

⁴¹ Exhibit 108:59-70; 109:65-70; 110:63-64.

⁴² Exhibit 108:71.

⁴³ Exhibit 108:71; 109:71-72; 110:65-66.

a. Income Capitalization Approach

Braemer's income capitalization approach considered several factors to determine a typical market rental rate, including market research, historic rent rolls, and comparable property rental rates, with necessary adjustments made to account for location, size, and other characteristics.⁴⁴

Braemer considered the historic rent rolls for the Subject Property using three prior years' data.⁴⁵ Braemer also compared the lease terms of three nearby comparable buildings in Omaha, once necessary adjustments were made.⁴⁶ For the 2020-22 appraisal, five nearby comparable buildings were analyzed.⁴⁷

As the Subject Property is approximately 80% occupied by FNBO, Braemer calculated a total of four different typical market rental rates for the owner-occupied space, the first floor commercial/retail space, the 22nd floor commercial/restaurant space, and the rentable area in the parking garage. For tax years 2017 through 2020, Braemer valued the owner-occupied space at \$18.50 per square foot; the first-floor space at \$15.00 per square foot; the 22nd floor space at \$10.00 per square foot; and the parking garage space at \$13.50 per square foot.⁴⁸ For tax year 2021, Braemer opined the COVID-19 pandemic caused the typical market rental rates to decrease to \$18.50 for owner-occupied space; \$12.50 for first-floor space; \$8.50 for 22nd floor space; and \$11.00 for parking garage space.⁴⁹

Braemer then analyzed vacancy rates using the Subject Property's actual vacancies for 2017 and comparing to vacancy rates provided by market analysis services. This resulted in Braemer's finding of 11% for typical market vacancy rates for tax year 2017.⁵⁰ Braemer found a

⁴⁴ Exhibit 108:75; 109:78; 110:71.

⁴⁵ Exhibit 108:79; 109:82; 110:75.

⁴⁶ Exhibit 108:85; 109:89.

⁴⁷ Exhibit 110:84.

⁴⁸ Exhibit 108:101; 109:105; 110: 103-4.

⁴⁹ Exhibit 110:105.

⁵⁰ Exhibit 108:104;

vacancy rate of 8% applicable to tax years 2018 and 2019.⁵¹ For tax years 2020 and 2021, a vacancy rate of 9% was used.⁵²

Next, a typical expense rate was calculated. For this, Braemer used an industry standard report, the historical expenses of the Subject Properties, and his experience and training.⁵³ The typical expense rate contemplated factors such as cleaning, repairs & maintenance, utilities, roads/grounds/security, administrative management, and insurance. Using this information, Braemer calculated an expense rate of \$9.22 per square foot of net rentable area for tax year 2017.⁵⁴ In 2018, a rate of \$8.70 was used.⁵⁵ Tax year 2019's rate was \$8.46.⁵⁶ A rate of \$8.25 was applied for 2020.⁵⁷ Lastly, \$8.24 was estimated for 2021.⁵⁸

Braemer next calculated the capitalization rate appropriate for the Subject Properties based upon a typical market rate. Once Braemer selected a capitalization rate, he then added (or loaded) the effective tax rate to properly account for property tax expenses. For 2017, Braemer's loaded capitalization rate was 10.249%.⁵⁹ A rate of 10.251% and 10.237% were used for 2018 and 2019, respectively.⁶⁰ Loaded capitalization rates of 10.743% and 10.724% applied in 2020 and 2021, respectively.⁶¹

Using these figures, Braemer found the total value of the Subject Properties to be \$24,815,000 for tax year 2017,⁶² \$27,635,000 for 2018, \$28,375,000 for 2019,⁶³ \$27,195,000 for 2020, and \$26,245,000 for

⁵¹ Exhibit 109:109.

⁵² Exhibit 110:103.

⁵³ Exhibit 108:107; 109:112; 110:113.

⁵⁴ Exhibit 108:116.

⁵⁵ Exhibit 109:123.

⁵⁶ Exhibit 109:122.

⁵⁷ Exhibit 110:123.

⁵⁸ Exhibit 110:124.

⁵⁹ Exhibit 108:127.

⁶⁰ Exhibit 109:134.

⁶¹ Exhibit 110:136.

⁶² Exhibit 108:132.

⁶³ Exhibit 109:140.

2021.⁶⁴

b. Sales Comparison Approach

Braemer's sales comparison approach began with the selection of five similar multi-tenant office buildings. Braemer then ensured each sale was an arm's-length transaction and adjusted for date of sale, location, size, age, and parking ratio.⁶⁵ Braemer also made adjustments to properly account for the difference in prices between leased-fee and fee-simple property rights.

Using this approach, Braemer found the value of the Subject Properties to be \$24,525,000 for tax year 2017,⁶⁶ \$27,790,000 for 2018 and 2019/⁶⁷ A value of \$27,790,000 was also found for tax years 2020 and 2021.⁶⁸

c. Reconciliation of Value

In determining his final opinion of value, Braemer gave substantially greater weight to the income approach, finding that properties similar to the Subject Properties are typically sold for their income-producing capabilities.⁶⁹ Braemer provided a final opinion of value for the Subject Properties at \$24,700,000 for tax year 2017,⁷⁰ \$27,700,000 for 2018, \$28,200,000 for 2019,⁷¹ \$27,375,000 for 2020, and \$26,725,000 for 2021.⁷²

2. Testimony of Michaela Larsen

Micaela Larsen worked as a Real Estate Specialist with the Commercial Division of the County Assessor for ten years.

The County Assessor valued each parcel separately in each of the

⁶⁴ Exhibit 110:142.

⁶⁵ Exhibit 108:157, 109:168; 110:170.

⁶⁶ Exhibit 108:167.

⁶⁷ Exhibit 109:180.

⁶⁸ Exhibit 110:184.

⁶⁹ Exhibit 108:169; 109:182; 110:187.

⁷⁰ Exhibit 108:170.

⁷¹ Exhibit 109:183.

⁷² Exhibit 100:188.

five tax years at issue. The Access Road and the Park 7 parcels were valued as if vacant and were assessed at the same value for all five tax years.⁷³ The vacant land value was derived from arm's length sales with adjustments made for location, topography, and economic differences.⁷⁴

The Double Tree Garage was valued using the cost-approach and assessed at the same value for all five tax years.⁷⁵ The cost approach derived its replacement and depreciation values from the Marshall & Swift Valuation Cost Manual, which is embedded within the County's computer-assisted mass appraisal (CAMA) system.⁷⁶

The Main Bank was valued using the income-approach.⁷⁷ The model utilized for 2017 and 2018 was created by a third-party contractor. Larsen had no specific knowledge of the contractor's qualifications or of the specific data sources the contractor relied upon to develop the valuation model used to assess the Main Bank. Beginning with the 2019 tax year assessment, the County Assessor used the income valuation model developed by Larsen. The narrative summary for these valuations stated that the "data in the model is derived from data gathered from the local market for properties of similar type."⁷⁸ However, the property record files do not include information to show how the input data was derived or used to develop the valuation model. While a list of sales was included in the property record file for each tax year at issue, Larsen stated that no sales comparison analysis was done.

For tax years 2017 and 2018, the model showed a gross rental rate of \$17 per square foot, with a vacancy rate of 5.8%, an expense rate of 35%, and a capitalization rate of 11%, resulting in a value of

⁷³ See Exhibits 33, 35,37, 94, 101 (Access Road); Exhibits 39, 41, 43, 98, 104 (Park 7).

⁷⁴ See Exhibit 33:7.

⁷⁵ See Exhibits 27, 29, 31, 96, 103.

⁷⁶ See Exhibit 27:8.

⁷⁷ See Exhibits 21, 23, 25, 92, 106.

⁷⁸ Exhibit 25:9, 92:11, 106:11.

\$25,747,800.⁷⁹ For tax years 2019 and 2020, a rental rate of \$18.50, vacancy rate of 10%, expense rate of 37%, and capitalization rate of 10.5% were used, resulting in an assessed value of \$27,182,200.⁸⁰ For tax year 2021, a rental rate of \$18.50, vacancy rate of 5%, expense rate of 40%, and capitalization rate of 10% were utilized, resulting in an assessed value of \$29,964,000.⁸¹

3. Testimony of Cynthia Jones

FNBO called Cynthia Jones, Real Estate Manager in the Buildings Division for FNBO. Jones testified the City of Omaha owned the Park 7 parking garage located on parcel ID# 1039982810. She also testified for each tax year at issue the City of Omaha collected and kept all revenue derived from that garage. Jones further testified FNBO derived no revenue from an access easement in place on parcel ID# 0308190000. Lastly, Jones stated that while the City of Omaha owned the Park 7 parking garage no rent was paid by the City to FNBO for the tax years at issue.

VI. ANALYSIS

“The appraisal of real estate is not an exact science.”⁸² “[A]ctual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.”⁸³ 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.⁸⁴ As discussed above, the appraisal report and testimony of Braemer is competent evidence sufficient to rebut the presumption that the board has faithfully performed its official duties in making its determinations and has acted upon sufficient competent

⁷⁹ Exhibits 21:8, 23:8.

⁸⁰ Exhibit 25:8, 92:10

⁸¹ Exhibit 106:10.

⁸² *In re Estate of Bock*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁸³ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 851, 906 N.W.2d 285, 298 (2018).

⁸⁴ *Id.*

evidence to justify its action.

The remaining question, then, is whether there is clear and convincing evidence the determinations by the County Board were arbitrary or unreasonable. The Commission finds the appraisal reports and testimony from Braemer demonstrate persuasive evidence of actual value. The opinions of value provided in Braemer's appraisal reports are supported by facts and data contained within the report as well as explanations for how those facts and data were gathered and used to reach the value opinions. Therefore, the Commission gives great weight to the opinions of value given by Braemer.

In contrast, Larsen's testimony indicates the assessments relied upon by the County Board for tax years 2017 and 2018 were developed by a third-party contractor. Little evidence or testimony was adduced to demonstrate what methodology or underlying facts and data were used to determine those values. Additionally, for the tax years 2019 through 2021 assessments, Larsen testified she had developed the model to assess the Subject Properties, but again, little evidence or testimony was adduced to show the underlying facts or methodology used to calculate those assessments.

"It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based."⁸⁵ Based upon the record before the Commission, we find the Braemer appraisals provide clear and convincing evidence of value for the Subject Properties

However, even though FNBO provided a breakdown of the values of the various parcels of the Subject Properties, valuing them as a single economic unit necessarily means the value of the Park 7 parking garage was included in Braemer's ultimate opinion of value. As the testimony of Jones shows, the Park 7 parking garage was, for each

⁸⁵ *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998). See *McArthur v. Papio-Missouri River NRD*, 250 Neb. 96, 547 N.W.2d 716 (1996); *Lindsay Mfg. Co. v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994).

taxable year at issue, owned by the City of Omaha, which collected and kept all revenue from that garage. FNBO did not derive any rent from that garage. Therefore, the value of that parking structure must be extracted from the estimate of value given by Braemer.

VII. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds there is clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

For reasons set forth above, the determinations of the County Board are vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the values of the Subject Properties for tax years 2017, 2018, 2019, 2020, and 2021 are vacated and reversed.⁸⁶

⁸⁶ 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.

2. The assessed values of the Subject Properties for the applicable tax years are:

Subject Property	Property ID #	Case Nos.	Tax Years	Land Value	Improvement Value	Total Value
Main Bank ⁸⁷	0308130000	17C 0478	2017	\$1,425,600 ⁸⁸	\$16,304,850	\$17,730,450
		18C 0407	2018	\$1,425,600 ⁸⁹	\$19,289,323	\$20,714,923
		19C 0327	2019	\$1,425,600 ⁹⁰	\$19,943,210	\$21,368,810
		20C 0293	2020	\$1,425,600 ⁹¹	\$18,965,812	\$20,391,412
		21C 0993	2021	\$1,425,600 ⁹²	\$18,847,904	\$20,273,504
Double Tree Garage	0308200000	17C 0479	2017	\$1,425,600 ⁹³	\$1,119,406	\$2,545,006⁹⁴
		18C 0405	2018	\$1,425,600 ⁹⁵	\$1,289,639	\$2,715,239⁹⁶
		19C 0325	2019	\$1,425,600 ⁹⁷	\$1,378,939	\$2,804,539⁹⁸
		20C 0295	2020	\$1,425,600 ⁹⁹	\$1,278,243	\$2,703,943¹⁰⁰

⁸⁷ For each tax year, the economic value of the Park 7 garage, as shown at Exhibit 187:1, 187:3, 187:5, 187:7, and 187:9 was subtracted from the opinion of value provided in the Braemer appraisal report. The calculation of the other Subject Properties is more fully explained below. Once those values were calculated, the value of each other parcel was subtracted from the Braemer value for each tax year. The remaining value was attributed to the Main Bank parcel.

⁸⁸ This value is calculated by multiplying a \$45 per square foot land value by 31,680, the net square footage of the property (31,680 x 45 = \$1,425,600).

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Id.

⁹⁴ Exhibit 187:1.

⁹⁵ See, Footnote 88.

⁹⁶ Exhibit 187:3.

⁹⁷ See, Footnote 88.

⁹⁸ Exhibit 187:5.

⁹⁹ See, Footnote 88.

¹⁰⁰ Exhibit 187:7.

Subject Property	Property ID #	Case Nos.	Tax Years	Land Value	Improvement Value	Total Value
		21C 0991	2021	\$1,425,600 ¹⁰¹	\$443,063	\$1,868,663 ¹⁰²
Park 7	1039982810	17C 0481 18C 0404 19C 0326 20C 0296 21C 0992	2017– 2021	\$1,430,280	Owned by City of Omaha	\$1,430,280 ¹⁰³
Access Road	0308190000	17C 0480 18C 0406 19C 0324 20C 0294 21C 0990	2017– 2021	\$540,000	\$0	\$540,000 ¹⁰⁴

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 2017, 2018, 2019, 2020, and 2021.

¹⁰¹ See, Footnote 88.

¹⁰² Exhibit 187:9.

¹⁰³ This value is calculated by multiplying the \$45 per square foot land value found at Exhibit 108:71, by 31,784, the net square footage found at Exhibit 39:3. (31,784 x 45 = \$1,430,280).

¹⁰⁴ This value is calculated by multiplying the \$45 per square foot land value found at Exhibit 108:71, by 12,000, the net square footage found at Exhibit 33:3. (12,000 x 45 = \$540,000).

7. This Decision and Order is effective for purposes of appeal on October 21, 2024.¹⁰⁵

Signed and Sealed: October 21, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

¹⁰⁵ 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.