

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

HPT IHG-2 Properties Trust,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17C 0512, 18C 0257 & 19C 0484

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

**For the Appellant:**

James F. Cann,  
Koley Jessen, PC, LLO

**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 an extended stay motel consisting of eleven buildings. The legal description and Property Record Files for the Subject Property are found at Exhibits 4, 5, and 6.

**II. PROCEDURAL HISTORY**

The Douglas County Appraiser determined that the assessed value of the Subject Property was \$5,494,900 for tax year 2017. HPT IHG-2 Properties Trust (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$2,244,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$5,494,900.<sup>1</sup>

The Douglas County Assessor determined that the assessed value of the Subject Property was \$5,494,900 for tax year 2018. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$2,244,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$5,494,900.<sup>2</sup>

The Douglas County Assessor determined that the assessed value of the Subject Property was \$4,785,900 for tax year 2019. The Taxpayer protested this assessment to the County Board and

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<sup>1</sup> E1.

<sup>2</sup> E2.

requested an assessed valuation of \$2,500,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$4,785,900.<sup>3</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 8, 2020, with Commissioner Keetle presiding. 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 14.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is *de novo*.<sup>4</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.<sup>5</sup>

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>6</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>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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<sup>3</sup> Ex 3.

<sup>4</sup> 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).

<sup>5</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>8</sup> *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.<sup>9</sup> 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.<sup>10</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>11</sup> 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.<sup>12</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>14</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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.<sup>15</sup> Actual value, market value, and

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<sup>9</sup> 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).

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

<sup>11</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> *Id.*

fair market value mean exactly the same thing.<sup>16</sup> 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.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

## **B. Facts & Analysis**

The Taxpayer presented an appraisal report prepared by D. Rick Whitesides, MAI, SRA, a certified general appraiser with Mitchell & Associates (Taxpayer's Appraisal).<sup>20</sup> The Taxpayer's Appraisal contained determinations of value for the Subject Property for tax years 2017, 2018, and 2019. The Taxpayer's Appraisal is certified as being performed according to, and prepared in conformity with, professional standards. The Nebraska Supreme Court has held that when an independent appraiser using professionally approved methods of appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law to overcome the presumption in favor of the determination of the County Board.<sup>21</sup> The presumption having been rebutted, the question of 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.<sup>22</sup>

Mark Jenkins with the Douglas County Assessor/Register of Deeds office testified regarding the assessment of hotel and motel properties in Douglas County, including the assessment of the Subject Property. Jenkins testified that the Subject Property was assessed using the income approach to value. Jenkins testified that there were several different income valuation models used for determining assessed values of hotels in Douglas County, including models for full service, limited service, extended stay, economy, and motels. The Subject Property was assessed using the extended stay hotel model.

Jenkins testified that there were eight to eleven extended stay hotels in Douglas County. Income and expense data for all kinds of hotel and motel properties was collected in 2016 and

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<sup>16</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>17</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>20</sup> The Revised Appraisal Report relied on by the Taxpayer and testified to by Whitesides is found at Exhibit 14. The Commission received the original, unrevised appraisal report as Exhibit 7, but we gave it little weight.

<sup>21</sup> *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>22</sup> *Id.*

again in 2018 to develop the models used to assess hotel and motel properties beginning in 2017 and 2019 respectively. Jenkins did not know whether income and expense data was obtained from any extended stay hotels for use in the county's model for extended stay hotels. Jenkins further testified that, if no data was collected from extended stay hotels, then data from other types of hotels would be used in the model for extended stay hotels, but he did not know what data was used in the extended stay hotel model. Jenkins testified that the county performed a cost approach to valuation, but that methodology and value determination is not in the record before the Commission in these appeals.

Josh Haber, General Manager of the Subject Property, testified about the location of the Subject Property and the customers who used it, as well as the impact of Covid-19 and flooding that occurred after the assessment dates on the Subject Property.

Whitesides testified regarding the value of the Subject Property for each of the three tax years at issue. Whitesides inspected and appraised the Subject Property for each tax year at issue and prepared the Taxpayer's Appraisal. Whitesides considered all three approaches to valuation when determining value. Due to the age of the Subject Property, he determined that a cost approach would not result in an accurate valuation and therefore a cost approach to value was not performed. Whitesides testified that he relied solely on the income approach when determining his opinion of value. The Taxpayer's Appraisal includes records of sales of hotel and motel properties. However, Whitesides testified that he did not fully develop the sales comparison approach in the Taxpayer's Appraisal because the sales and available information about them were limited. Instead, he used the sales to indicate a value range for the Subject Property. Whitesides reviewed the actual income and expense data for the Subject Property for the years on appeal as well as industry publications and other market data. Based on his analysis, Whitesides appraised the Subject Property at \$2,996,000, \$2,956,000 and \$2,826,000 for tax years 2017, 2018, and 2019 respectively.<sup>23</sup>

The record before the Commission demonstrates that both Jenkins and Whitesides relied on the income approach when determining the value of the Subject Property for the tax years at issue. The Taxpayer's Appraisal and Whitesides' testimony explained the information and methodology utilized in determining value using the income approach. Additionally, the Taxpayer's Appraisal contains an analysis of sales to support the determination of value from the

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<sup>23</sup> E14:83.

income approach. The County Board presented the Property Record Files for each of the three tax years at issue showing the income approach to value determined using the County Assessor's model. The record, however, does not demonstrate the basis of the income and expense numbers utilized in the county's model. While Jenkins testified that different valuation models exist for different types of hotels and motels, he did not know if the model used to value extended stay hotels was based on market data from extended stay hotels rather than other types of hotels and motels. Lacking the information regarding the data upon which the county's income model is based, the Commission is unable to give it much weight.<sup>24</sup>

We find Whitesides' values for the Subject Properties persuasive. His income approach analysis and his sales analysis support the reliability of his conclusions. Additionally, his experience performing appraisals in the marketplace gives the Commission confidence in his ability to select comparable properties and to determine which values to utilize when data analysis yields a range of potential values. The Commission finds that Whitesides' opinion accurately reflects the market value of the Subject Properties for tax years 2017, 2018 and 2019. These opinions, together with the Taxpayer's Appraisal, constitute clear and convincing evidence that the County Board's determinations were unreasonable for tax years 2017, 2018 and 2019.

## 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. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

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<sup>24</sup> "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." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998).

## 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 2017, 2018, and 2019 are vacated and reversed.<sup>25</sup>
2. The taxable value of the Subject Property for tax year 2017 is: \$2,996,000.
3. The taxable value of the Subject Property for tax year 2019 is: \$2,956,000.
4. The taxable value of the Subject Property for tax year 2019 is: \$2,826,000.
5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2017, 2018, and 2019.
9. This Decision and Order is effective for purposes of appeal on December 15, 2021.<sup>26</sup>

Signed and Sealed: December 15, 2021

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>25</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.

<sup>26</sup> 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.