

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

OHW Holdings, Inc.,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 17C 0131

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

For the Appellant:

Steven J. Olson,
Fitzgerald, Schorr, Barmettler
& Brennan, P.C.

For the Appellee:

Andrea Gosnold-Parker,
Deputy Sarpy County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is an improved commercial parcel located in Sarpy County. The parcel is improved with an 8,175 square foot medical office. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Sarpy County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$1,030,000 for tax year 2017. OHW Holdings, Inc. (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$849,996. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$1,030,000.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 18, 2019. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as

¹ E1

ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1 through 27.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.² 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."³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

² 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).

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.”⁹ 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.”¹⁰ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. APPLICABLE 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.¹²

“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.”¹³ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829.

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

“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 this Constitution.”¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ 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.”²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

V. SUMMARY OF THE EVIDENCE

The Subject Property is improved with a medical office building originally constructed in 1988 with additions in 1993.²⁷ The medical office building is a one-story single tenant building of construction class “D,” rated as good quality and average condition.²⁸

¹⁸ *Neb. Const.*, Art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *MAPCO; Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc.*

²² *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

²⁷ E4:6

²⁸ E4:3-6

The Taxpayer alleged that a portion of the improvements on the Subject Property should have been classified as office building rather than medical office and that the value of the Subject Property was not equalized with other comparable properties. The Taxpayer alleged that, because the Subject Property housed the consolidated billing offices for a medical practice consisting of twelve doctors operating from five different locations, in addition to their exam and treatment rooms, the amount of general office space in the Subject Property was greater than the typical amount in medical office buildings.

Mr. Tim Ederer, a real estate appraiser with the County Assessor's office, testified regarding the assessment of the Subject Property. Mr. Ederer testified that he had personally inspected the exterior of the Subject Property and had reviewed the information obtained from an internal inspection of the Subject Property by another employee of the County Assessor's office conducted a week prior to the hearing. Mr. Ederer testified that the County Assessor utilized the income approach to valuation and the cost approach to valuation for commercial office buildings, including medical office buildings, but primarily relied on the income approach.²⁹ Mr. Ederer stated that medical office buildings typically have a higher level of finishes than general office buildings, including but not limited to additional plumbing and electrical finish in exam rooms. Mr. Ederer acknowledged that at least a quarter of the space in the Subject Property was used as general office space. However, he also testified that typical medical office buildings have space for general office use and that, in his opinion, the amount of general office use found in the Subject Property was not more than a typical medical office building. The Taxpayer did not provide any other information regarding the amount of general office space in any of the other properties designated medical office buildings in the exhibits, nor did it provide information regarding the amount of general office space that was typical in a medical office building within the market area of the Subject Property. The Taxpayer has failed to demonstrate that the classification of the Subject Property as a medical office building was unreasonable or arbitrary.

The Taxpayer alleged that, to be equalized with other comparable properties, the Subject Property should be assessed in the same manner as the property located at 1502 Washington Street. 1502 Washington is improved with a medical office building originally constructed in

²⁹ See, E4:2-5

2002.³⁰ The medical office building is a two-story multi-tenant building of construction class “D,” rated as average quality and average condition. Comparable properties share similar use (residential, commercial, industrial, or agricultural), physical characteristics (size, shape, and topography), and location.³¹ The Subject Property and the property at 1502 Washington are both classified as medical office buildings, but Mr. Ederer indicated that the property at 1502 Washington was assessed differently than the Subject Property due to different characteristics. He testified that the two different levels of 1502 Washington were separated, with separate entrances and separate services, with the upper level being used as a medical office and the basement level being used as a separate general office space. Additionally, the basement level of 1502 Washington had no visibility from the main street and was below the front grade of the building. Different rental rates were applied to the different levels of the property at 1502 Washington due to the multi-tenant use of the improvements and other differences in classification and use. Mr. Ederer testified that he was unaware of any single tenant medical office building in Sarpy County that was assessed using different rental rates for different sections of the property used by the same tenant. The record before the Commission demonstrates that the differences in the income approach factors applied to the Subject Property compared to the other properties presented are a result of differences in use and physical characteristics.

VI. 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 is denied.

³⁰ E19:8

³¹ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.³²
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 117,464
<u>Improvements:</u>	<u>\$ 912,536</u>
Total	\$1,030,000

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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 year 2017.
7. This Decision and Order is effective for purposes of appeal on June 19, 2020.³³

Signed and Sealed: June 19, 2020

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

³² 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.

³³ 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.