

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Dawson County Board of Equalization,
Appellee.

Case No: 17C 0026

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

For the Appellant:

Kuldip Singh, Member
Cheema Investments, LLC,
Pro Se

For the Appellee:

Jared R. Dean,
Deputy Dawson County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Lexington, Nebraska. The parcel is improved with a 2,600 square foot convenience store and gas station. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Dawson County Assessor determined that the assessed value of the Subject Property was \$352,681 for tax year 2017. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Dawson County Board of Equalization (the County Board) and requested an assessed valuation of \$125,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$352,681.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on September 11, 2018. At the hearing the Commission received exhibits 1 through 21 as well as the testimony of witnesses.

¹ Ex 1.

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

A 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 Board's valuation was unreasonable or arbitrary.⁸

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

² See Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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).

³ *Brenner* at 283, 811.

⁴ *Id.*

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

⁶ *Omaha Country Club v. Douglas Cty. 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 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).

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

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. VALUATION & EQUALIZATION

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.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

“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

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).

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 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.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

Kuldip Singh, a member of Cheema Investments, LLC, testified on behalf of the Taxpayer. Mr. Singh testified that the Taxpayer purchased the Subject Property for \$225,000 on January 3, 2017. Mr. Singh further testified that \$100,000 of the purchase price paid for the Subject Property was actually for personal property contained in the improvements located on the Subject Property.²³ The Taxpayer alleged that the Subject Property should be assessed at the price it was purchased for within days of the January 1 assessment date for the 2017 tax year.

“It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”²⁴ “Pursuant to § 77-112, the statutory

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 *Equitable Life v. Lincoln Cty. 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).

²¹ *Newman v. Cty. 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.

²³ The Commission notes that the Real Estate Transfer Statement Form 521 filed with the Register of Deeds indicates that the \$225,000 purchase did not include any non-real or personal property as part of the sale.

²⁴ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”²⁵

The Taxpayer did not present any information regarding sales of similar property or, because the Subject Property is a commercial property, any income or expense information for the Subject Property or any similar commercial property to demonstrate that the price the Taxpayer paid for the Subject Property was its actual or fair market value, with or without a reduction for personal property.

The County Board presented a document captioned a “Sales Study TERC Case Cheema” which contained information regarding four additional sales of properties containing convenience stores and gas stations.²⁶ While the Property Record Files (PRFs) for these sold properties were not provided to the Commission, Exhibit 8 shows that their sales prices were greater per square foot than the assessed value of the Subject Property, which would make them significantly greater than the per square foot sales price of the Subject Property using the sale price listed on the Real Estate Transfer Statement for the sale of the Subject Property.

The Taxpayer alleged that the Subject Property should be valued at a lower amount per square foot than other properties which contained convenience store improvements, due to differences in their features or location. The Taxpayer did not present any information to quantify any difference in value due to the features or location differences, such as commercial land sales or income information, to allow the Commission to analyze this allegation. The County Board offered tables showing that the per square foot value of the Subject Property is neither the highest nor lowest of any of the convenience store properties in Dawson county or Lexington, but the partial PRFs or web information regarding these properties is not sufficient for the Commission to determine what factors account for the differences in per square foot value.

²⁵ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

²⁶ E8

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 is denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawson County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.²⁷
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$ 43,095
<u>Improvements:</u>	<u>\$309,586</u>
Total:	\$352,681
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawson County Treasurer and the Dawson 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 July 3, 2019.²⁸

²⁷ 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.

²⁸ 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.

Signed and Sealed: July 3, 2019

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner