

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

Wassco Embassy, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17C 0437

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

**For the Appellant:**

Sean T. Mullen,  
Sean T. Mullen P.C., L.L.O.

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas 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 Douglas County. The parcel is improved with an 81,825 square foot office building. The legal description of the parcel and Property Record File (PRF) for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the Subject Property was \$6,500,000 for tax year 2017. Wassco Embassy, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$6,054,798. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$6,500,000.<sup>1</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 June 24, 2019. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits 1 through 6; exhibit 7 was not received.

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<sup>1</sup> Ex 1, Ex 2:13.

### 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 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>

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>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. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

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<sup>2</sup> 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).

<sup>3</sup> *Brenner* at 283, 811.

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

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas County 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 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>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>9</sup> 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.”<sup>10</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

## IV. LAW

### A. Valuation

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>12</sup>

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

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>17</sup> 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.<sup>18</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less

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<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Omaha Country Club* at 180, 829.

<sup>14</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>15</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>17</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>18</sup> *Cabela's Inc.*

than the actual value.<sup>19</sup> 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.”<sup>20</sup>

## V. ANALYSIS

The Taxpayer called Micaela Larsen, a Real Estate Specialist with the Douglas County Assessor/Register of Deeds office, to testify regarding the assessment of the Subject Property. Ms. Larsen testified that the County Assessor’s office typically values commercial real property using the income approach to valuation. Under Neb. Rev. Stat. § 77-112, actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. The statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.<sup>21</sup> Instead of information regarding how the County Assessor determined the assessed value of the Subject Property for tax year 2017, the Property Record File (PRF) contains a narrative summary that indicates:

“In those instances in which an administrative tribunal, such as the Douglas County Board of Equalization, or Nebraska Tax Equalization and Review Commission, has changed the value from that set by the Assessor/Register of Deeds Office in a prior year, and that value has not been subsequently changed, a “reconciled value” is provided. That is, the value determined by the administrative entity is provided, but there is not description of the method used by the administrative entity to reach that value because the Assessor/Register of Deeds Office is not privy to the methodology used in determining that value.

“Along with the value determined by the administrative entity, the Assessor/Register of Deeds office provides the methodology that it used to

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<sup>19</sup> *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).

<sup>20</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>21</sup> *Schmidt v. Thayer County Bd. of Equalization*, 10 Neb.App. 10, 18, 624 N.W.2d 63, 69 - 70 (2001).

determine value---Cost, Market, or Income, and a Narrative Summary for that valuation.”<sup>22</sup>

Ms. Larsen testified that the PRF for the Subject Property does not contain any methodology used to determine any value for the Subject Property. The PRF indicates that the County Board of Equalization changed the assessed value of the Subject Property from \$7,762,700 to \$6,500,000 in 2015 and the total assessed value remained \$6,500,000 for tax years 2016 and 2017, the tax years at issue in this appeal. Ms. Larsen testified that for 2017 the County Assessor’s office conducted a land study to update commercial land values in the county. To apply the new land values, the County Assessor’s office changed the amount of value allocated to the land component but reduced the value of the improvements to keep the total assessed values the same as the prior year’s total assessed values. Ms. Larsen could not explain how the County Board arrived at the total valuation of \$6,500,000 for the Subject Property. “Where the record contains cryptic information without explanation, and no explanation of this cryptic information is provided by the document or later testimony to explain the significance of this information, the information is worthless.”<sup>23</sup> “Where a county assessor has not acted on his own information, and where it is arbitrarily determined without explanation of the methods used or the elements considered, there is no presumption that the valuation is correct, and such a valuation is not supported by competent evidence and is legally erroneous.”<sup>24</sup> The Taxpayer has overcome the presumption in favor of the determination of the County Board.

The Taxpayer called Arnold Wassenberg, a member of Wassco Embassy, LLC, to testify regarding the Subject Property. Mr. Wassenberg testified that he purchased the Subject Property, along with two other parcels, on February 3, 2015, for \$6,500,000, as part of a 1031 exchange. Mr. Wassenberg testified that, in his opinion, the value of the Subject Property was \$5,500,000 as of the assessment date. Mr. Wassenberg stated that, in his opinion, the Subject Property was worthless without sufficient parking and he attributed approximately \$1,000,000 of the \$6,500,000 purchase price to the other two lots, which contained additional parking for the Subject Property.

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<sup>22</sup> E2:7

<sup>23</sup> *Kawasaki Motors Corp. v. Lancaster County Bd. of Equalization*, 7 Neb.App. 655, 658, 584 N.W.2d 63, 66 (1998).

<sup>24</sup> *Leech, Inc. v. Bd. Of Equal.*, 176 Neb. 841, 846, 127 N.W.2d 917, 921 (1964).

The Nebraska Supreme Court has held that an owner who is familiar with his property and knows its worth is permitted to testify as to its value.<sup>25</sup> However, in the present appeal, the Commission must also consider that “[i]t 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.”<sup>26</sup>

The Taxpayer offered the PRF for the Subject Property but not the PRFs for the other two parcels, described as adjacent parking lots. The Commission is unable to determine the size of, or improvements (pavement, lighting, etc.) on, those two adjacent parcels. The Taxpayer presented a Real Estate Transfer Statement which indicated that it purchased the Subject Property and two additional parcels in February 2015 for \$6,500,000.<sup>27</sup> The Taxpayer also presented a Uniform Commercial Purchase Agreement which appears to indicate that it agreed to purchase just the Subject Property, without the two additional lots, for \$6,500,000.<sup>28</sup>

Although the PRFs for the adjacent parcels were not presented, Mr. Wassenberg indicated that the current assessed values of the two adjacent parcels was approximately \$1,000,000, but that the two adjacent parcels were assessed for half of that amount in the prior assessment year. The PRF for the Subject Property indicates that it was built in 1990 and remodeled in 2000, but the Taxpayer stated that the interior of the building “was so 70s, as they say” when he purchased the Subject Property. Mr. Wassenberg testified that he spent approximately three quarters of a million to one million fifty thousand dollars renovating the building on the Subject Property after the purchase date and before the assessment date under appeal.

The Taxpayer presented, without explanation, a document titled Cash Flow 12 (Cash) Embassy Tower – (et) January 2017 – December 2017,<sup>29</sup> which may show the actual income and expenses for the Subject Property and may or may not also include the two adjacent parcels. However, “Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across

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<sup>25</sup> *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

<sup>26</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>27</sup> E5

<sup>28</sup> E6

<sup>29</sup> E4

comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.”<sup>30</sup> For these reasons, the Commission declines to perform its own income approach analysis based on the Taxpayer’s document.

The County Board presented a spreadsheet of all of the qualified office building sales in Douglas County during the three year period from October 1, 2013, and September 30, 2016. Although the sale of the Subject Property occurred during this time period, Ms. Larsen testified that the sale of the Subject Property was not included in this list because it was a part of a multi-parcel transaction, which would not be utilized by the County Assessor’s office when determining values. The sales of office buildings in Douglas County with the same quality and condition rating as the Subject Property range from \$69.03 per square foot to \$309.26 per square foot. The per square foot value of the Subject Property based on the assessed value of \$6,500,000 would be \$79.43 per square foot, toward the lower end of the range of sales prices but still within that range. The per square foot value of the Subject Property based on the Taxpayer’s requested value of \$5,500,000 would be \$67.21 per square foot, which would be lower than any other qualified sale of an office building of comparable quality and condition in the county. “Pursuant to § 77-112, the statutory 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.”<sup>31</sup>

The evidence presented does not support Mr. Wassenberg’s opinion of value of the Subject Property for tax year 2017. The Commission cannot determine, based on the evidence presented to it, that the Taxpayer has shown that the actual value of the Subject Property was \$5,500,000, or that the purchase price of the Subject Property was determinative of its actual value.

On the appeal form used to initiate this appeal, the Taxpayer asserted that the assessed value of the Subject Property was “excessive based on both equalization with other properties and on a fair market value basis.” However, the Taxpayer did not argue or present evidence on the equalization issue in the course of the hearing. Because we have determined that the Subject Property was assessed at the low end of the range of comparable sales in its market area for the

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<sup>30</sup> International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

<sup>31</sup> *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

tax year in question, we are satisfied that the record does not support a reduction in value on the basis of equalization.

## **VI. 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 determination. However, 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.

## **VII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.<sup>32</sup>
2. The taxable value of the Subject Property for tax year 2017 is: \$6,500,000.
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 year 2017.

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<sup>32</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.



7. This Decision and Order is effective for purposes of appeal on August 21, 2020.<sup>33</sup>

Signed and Sealed: August 21, 2020

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>33</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.