

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Box Butte County Board of Equalization,
Appellee.

Case No: 17R 0017

Decision and Order Reversing the Decision
of the
Box Butte County Board of Equalization

For the Appellant:
Kuldip Singh, Member,
Pro Se

For the Appellee:
Travis Rodak,
Box Butte County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Box Butte County improved with an apartment complex.¹ The legal description and property record card for the Subject Property are found at Exhibit 8:3-7.

II. PROCEDURAL HISTORY

The Box Butte County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$411,646 for tax year 2017. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Box Butte County Board of Equalization (the County Board) and requested an assessed valuation of \$281,804. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$411,646.²

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held hearings in three separate appeals concerning the same parties, including 17R 0017, on September 10, 2018. On that date, the Commission established a common record for the purpose of explaining the rules and procedure

¹ As indicated by the case number 17R 0017, the Commission understood the Subject Property to be a residential parcel when the appeal was initially processed. Based on the evidence received in the course of the hearing, the property is clearly commercial, an apartment complex commonly known as Camden Court.

² Ex 1.

for the hearings. The Commission proceeded to conduct an individual hearing for each of the three parcels. Exhibits 1 through 8 were admitted without objection in Case No. 17R 0017.³ Kuldip Singh, a member of Cheema Investments, LLC, and Michelle Robinson, the County Assessor, testified.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ 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.⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not

³ The exhibits were not received from the parties until the date of the hearing, and had not been fully marked at the time of the hearing. The page numbers referenced in this order were added after the hearing and will be maintained in the Commission's official record of the proceedings.

⁴ 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).

⁵ *Brenner* at 283, 811.

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

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.¹⁰

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.¹¹ The commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION AND 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.¹⁴

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.¹⁵ Actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of

¹⁰ *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Omaha Country Club* at 180, 829.

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2018).

January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

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.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² 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.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

B. Facts & Analysis

On May 25, 2018, the Commission issued an order for hearing in this appeal. This order contained the following paragraph:

11. **REQUIRED EVIDENCE Each party shall provide as an exhibit:**
 - a. Copies of the County's Property Record File for any parcel a party will assert is a comparable parcel.

¹⁸ See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2018).

²⁰ *Neb. Const.*, Art. VIII, §1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *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).

²³ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

NOTE: *A screen shot or print out of a web page is not a property record file. A property record file is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*²⁵

The Commission includes this requirement, and the explanatory note, because the property record file contains detailed information about the qualities and characteristics of the property, its valuation history, and the valuation methodology used by the County Assessor. This information is essential to determine whether properties are comparable for valuation and equalization purposes.

Despite this directive in the order for hearing, the Taxpayer presented only printed copies of web pages as documentary evidence of the valuation of allegedly comparable properties. Having reviewed these exhibits, we find that they do not contain the information necessary to determine whether the properties alleged to be comparable were in fact comparable.

As noted above, the Subject Property in this appeal is a commercial parcel improved with an apartment complex. The record contains inconsistencies regarding the nature of the improvements. The Property Record File maintained by the County Assessor indicated that the Subject Property includes two buildings, one 11,968 square feet and the other 5,984 square feet (a total of 17,952 square feet).²⁶ The web page printout offered by the Taxpayer indicated that the Subject Property includes three buildings: 5,984 square feet, 8,976 square feet, and 1,496 square feet (a total of 16,456 square feet).²⁷ The parties did not specifically address this issue in their presentation of evidence, and Mr. Singh testified that he was uncertain how many apartment units were located on the Subject Property. Under these circumstances, the property record file (Ex. 8:3-7) is the best evidence of the quality and characteristics of the Subject Property.

The central thrust of the Taxpayer's evidence was that the valuation of some other properties in the vicinity of the Subject Property decreased from tax year 2016 to tax year 2017, but the valuation of the Subject Property increased. Michelle Robinson, the County Assessor, testified that she made modifications to her methodology for valuing apartment buildings throughout the

²⁵ See *Order to Vacate Single Commissioner Designation and Order Amended Order for Hearing and Notice of Hearing*, Case File.

²⁶ Ex. 8:3-7.

²⁷ Ex. 6:1-2. We also note that these totals are inconsistent with a sketch included with Ex. 6, which suggests that one of the buildings has an additional 1,788 square feet of area.

county for tax year 2017 to bring valuation for the subclass within the acceptable statutory range of a 92% to 100% assessed-to-sale ratio.²⁸ According to Ms. Robinson’s testimony, this change to methodology caused valuations for some parcels to increase and for others to decrease, but the subclass as a whole was brought into the acceptable statutory range.

The exhibits offered by the Taxpayer included parcels that were plainly not comparable to the Subject Property, such as an assisted living facility and a subsidized low-income housing complex. However, the Taxpayer also identified one of the County Board’s proposed comparables (“Comp 11”)²⁹ as being particularly comparable to the Subject Property.

According to the property record file offered by the County Board, the Subject Property and Comp 11 are in different neighborhoods.³⁰ Both are rated at “average rank.”³¹ Comp 11 is rated at average condition, where the Subject Property is rated as badly worn plus.³² Both are apartment buildings built using similar components.³³ The County Assessor testified that the only difference between the two properties was that Comp 11 included 12 apartment units, whereas the Subject Property had 24 units. Comp 11 is somewhat smaller overall, at 11,400 square feet as compared with the Subject Property at 17,952 square feet.³⁴ Asked to contrast the two properties, the County Assessor testified that with all things being equal, in the market, the economies of scale would operate such that larger units would command lower market prices per unit of measurement, whether the unit of measurement be price per square foot, price per unit, price per bedroom, etc. However, Comp 11 is appraised at \$16.13 per square foot, and the Subject Property is appraised at \$22.25 per square foot.³⁵

The record before the Commission provides no explanation for this difference. Factors such as the quality (“rank”) rating and economies of scale would typically result in a lower price per square foot for the Subject Property. Accordingly, based upon the evidence received in this appeal, we find that the Subject Property should be valued at the same amount per square foot as

²⁸ See Neb. Rev. Stat. § 77-5023(2) (Reissue 2018).

²⁹ Ex. 8:60-63.

³⁰ Ex. 8:3, Ex. 8:60.

³¹ We assume that “rank” is the equivalent of the more traditional “quality” rating.

³² Ex. 8:6, Ex. 8:63.

³³ Id.

³⁴ “Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.” Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

³⁵ Ex. 8:3-7, Ex. 8:60-63. We reach this value by dividing the total improvement value by the square footage of the improvements, as indicated on the property record cards.

Comp 11, that is, \$16.13 per square foot. \$16.13 per square foot × 17,952 square feet = \$289,565.76, rounded to \$289,566. The land component of the Subject Property remains undisturbed at \$12,176, for a total taxable value of \$301,742.

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 determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Box Butte County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is vacated and reversed.³⁶
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 12,176
<u>Improvements</u>	<u>\$289,566</u>
Total	\$301,742

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Box Butte County Treasurer and the Box Butte 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.

³⁶ 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 April 29, 2019.³⁷

Signed and Sealed: April 29, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁷ 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.