

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Western Tabor Ranch Apartments, LLC,
Appellant,

v.

Lincoln County Board of Equalization,
Appellee.

Case Nos: 18C 0026, 19C 0057 & 20C 0074

Decision and Order Vacating and Reversing
the Determination of the Lincoln County
Board of Equalization

For the Appellant:

Kuldip Singh, Member,
Pro Se

For the Appellee:

Joe W. Wright & Stephen King,
Deputy Lincoln County Attorneys

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Lincoln County. The parcel is improved with a 62,167 square foot, 49-unit apartment complex consisting of seven buildings. The legal description and property record card for the Subject Property are found at Exhibits 4,5, and 6.

II. PROCEDURAL HISTORY

The Lincoln County Assessor determined that the assessed value of the Subject Property was \$1,519,000 for tax year 2018. Western Tabor Ranch Apartments, LLC (the Taxpayer) protested this assessment to the Lincoln County Board of Equalization (the County Board) and requested an assessed valuation of \$1,159,445. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,519,000.¹

The Lincoln County Assessor determined that the assessed value of the Subject Property was \$1,519,000 for tax year 2019. The Taxpayer protested this assessment to the County Board and

¹ Ex 1.

requested an assessed valuation of \$1,361,445. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$1,519,000.²

The Lincoln County Assessor determined that the assessed value of the Subject Property was \$1,519,000 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$1,361,445. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$1,519,000.³

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 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. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1 through 6, and page 1-5 and 13-37 of exhibit 7. Page 38 of Exhibit 7 was later offered and received into the record.⁴

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.⁵ 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.⁶

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.⁷

² Ex 2.

³ Ex 2.

⁴Exhibit 7 pages 6-12 were later offered not received into the record on the objection of the Appellee.

⁵ 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).

⁶ *Brenner* at 283, 811 (Citations omitted).

⁷ *Id.*

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ 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.¹¹

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.¹² 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.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

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.¹⁵

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

⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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.¹⁶ Actual value, market value, and fair market value mean exactly the same thing.¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

Rent-restricted housing projects, commonly known as Section 42 housing projects, shall be valued by the assessor using an income-approach calculation that uses the capitalization rate contained in a report by the Rent-Restricted Housing Projects Valuation Committee and the actual income and expense data of the project from the prior year.²¹ If the actual income and actual expense data required to be filed for a rent-restricted housing project under subsection (5) of this section is not filed in a timely manner, the county assessor may use any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112.²² If a county assessor, based on the facts and circumstances, believes that the income-approach calculation does not result in a valuation of a rent-restricted housing project at actual value, then the county assessor shall present such facts and circumstances to the county board of equalization. If the county board of equalization, based on such facts and circumstances, concurs with the county assessor, then the county board of equalization shall petition the Tax Equalization and Review Commission to consider the county assessor's utilization of another professionally accepted mass appraisal technique that, based on the facts and circumstances presented by a county board of equalization, would result in a substantially different determination of actual value of the rent-restricted housing project.²³

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ *Omaha Country Club* at 180, 829 (2002).

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-1333(1)-(8)(Reissue 2018)

²² Neb. Rev. Stat. § 77-1333(9)(Reissue 2018)

²³ Neb. Rev. Stat. § 77-1333(10)(Reissue 2018)

B. Facts & Analysis

The Subject Property is a 2.78-acre commercial property located in North Platte, Nebraska. The Subject Property is improved with seven buildings containing 49 residential units, including the on-site managers apartment, and a clubhouse, all of which were constructed in the year 2000. The Subject Property is a rent restricted housing project whose valuation falls under Neb. Rev. Stat §77-1333 (Reissue 2018).

Mr. Kuldip Singh, a Member of the Taxpayer, Western Tabor Ranch Apartments, LLC., testified that the Taxpayer purchased the Subject Property for \$1.34 million in 2017. Mr. Singh testified that he was unaware that the Subject Property was a rent restricted housing project until a few weeks prior to the hearing date. The Taxpayer presented an appraisal report that determined the value of the subject property at \$1,350,600²⁴ as of November 27, 2017 (Taxpayer's Appraisal). This Taxpayer's Appraisal is certified as having been developed and prepared in conformity with the Uniform Standards of Professional Appraisal Practice.²⁵

Charity Farley, the Lead County Appraiser (The County Appraiser) testified that for tax year 2018 the value of the Subject Property was determined using the income approach that is required for valuing a rent restricted housing project by Neb. Rev. Stat. §77-1333. Julie Stenger The Lincoln County Assessor (The County Assessor) utilized the average of three recent years of income and expense information submitted for the Subject Property under 77-1333 when determining the assessed value for all rent restricted housing project for tax year 2018.²⁶ The income and expense information for tax year 2018 was submitted by the prior owner of the Subject Property or their representatives, not the Taxpayer. The County Assessor also utilized the capitalization rate provided by the Rent-Restricted Housing Projects Valuation Committee and required to be used in developing the capitalization rate under Neb. Rev. Stat. 77-1333.²⁷ The assessed value of the Subject Property determined using this methodology was \$1,519,000 for tax year 2018.²⁸

²⁴ See, E4:158 & 159. The Appraisal Report determined the total value of the property appraised at \$1,380,000 which included \$29,400 in personal property, when the value of the personal property is removed the remaining real property is valued at \$1,350,600.

²⁵ E4:206

²⁶ E4:55

²⁷ E4:54

²⁸ E4:54 & 83

The County Appraiser testified that actual income and expense information for the Subject Property was not submitted for tax years 2019 and 2020. Therefore the County Assessor did not determine a value for the Subject Property using the income approach that is required for valuing a rent restricted housing project by Neb. Rev. Stat. §77-1333, for tax years 2019 and 2020 but instead carried forward the income expense information submitted for tax year 2018 as well as the capitalization rate determined for tax year 2018, resulting in the same assessed value of the Subject Property for tax years 2019 and 2020 as determined for tax year 2018.²⁹

The County Appraiser further testified that for tax years 2019 and 2020 the County Assessor's office changed its methodology for calculating assessed values of rent restricted housing project under §77-1333 utilizing only the most recent years information rather than the average of three years. After this change in the methodology the assessed value for a 65-unit rent restricted housing project in North Platte (which was less than that of the Subject Property in tax year 2018) decreased in value for tax years 2019 and 2020, however the PRF included in the record does not show how the income approach calculation was made for tax years 2019 and 2020.³⁰

To support the County Assessors determination of value the County Assessor's office calculated a value for the Subject Property using three additional sets of data. For the 2018 assessment year there were two different sets of income and expense data filed with the Department of Revenue for the Subject Property. The Taxpayer's Appraisal utilized a different set of income and expense data. Using these three sets of information and the 2018 capitalization rate the County Assessor performed an income approach using only the single year of data submitted to determine values of \$1,040,800, \$1,546,500 and \$1,666,200.

Under Nebraska law, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence.³¹ The Taxpayer has presented such an appraisal, so we find that the presumption in favor of the determination of the County Board has been rebutted. With the presumption rebutted, the burden remains on the Taxpayer to demonstrate that the County Board's decision was arbitrary or unreasonable.

²⁹ E5:55, E6:147

³⁰ See, E7:35 for valuation history of the other rent restricted housing project

³¹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

Valuation for the 2018 Tax Year

The Taxpayer alleges that the price paid for the Subject Property was its market value as the sale was arms-length and between a willing buyer and willing seller.³² The Taxpayer further alleges that the Taxpayer's Appraisal prepared with the purchase, which valued the Subject Property at \$1,350,600,³³ was an indicator of value for the Subject Property as of the assessment date. Finally, the Taxpayer alleges that the assessed value of the Subject Property is not equalized with the assessed value of other comparable properties.

The County Board alleges that the Subject Property is required to be valued pursuant to the methodology set forth in Neb Rev. Stat. §77-1333 (Reissue 2018) and that any value determined using any other methodology cannot be considered. That statute also states that if the income and expense data for a rent restricted property is not filed in a timely manner, as was the case for the Subject Property, the county assessor may use any method for determining value that is consistent with professionally accepted mass appraisal methods.³⁴ This provision does not require the County Board to employ any particular professionally accepted mass appraisal methodology.

Further, the record before the Commission indicates that the methodology set forth in Neb Rev. Stat. §77-1333 (Reissue 2018), was not used to value the Subject Property for tax years 2019 and 2020, rather the 2018 value was simply carried forward, and that this was not done for any other property in the County. The Nebraska Constitution requires that Taxes shall be levied by valuation uniformly and proportionally upon all real property.³⁵ 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.³⁶ "The object of Nebraska's uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value."³⁷

The Commission is left with valuation information regarding the value of the Subject Property only for the 2018 assessment year. The information from the Taxpayer consists of the \$1,340,000 purchase price paid for the Subject Property, and the determination of value

³² See, Neb. Rev. Stat. 77-112 (Reissue 2018)

³³ See, E4:158 & 159. The Appraisal Report valued the Subject Property as of November 27, 2017 and valued the Subject Property at \$1,380,000 which included \$29,400 in personal property which when removed results in a value of \$1,350,600.

³⁴ Neb. Rev. Stat. §77-1333(9) (reissue 2018)

³⁵ Nebraska Constitution Article VII, Sec. 1. (Reissue 2016)

³⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁷ *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 20 (2012)

contained in the Taxpayer's Appraisal of \$1,350,600. The County Board's information consists of valuations made using different interpretations of the valuation methodology found in §77-1333. The first determination made using three years of information of \$1,519,000, is the valuation actually applied to the Subject Property for tax year 2018. The County Appraiser also performed three separate calculations using one years worth of income and expense information derived from different sources resulting in valuations of \$1,040,800, \$1,546,500 and \$1,666,200.

Neb. Rev. Stat. §77-1333 does not change the requirement that all non-agricultural or horticultural real property must be valued at 100% of its actual or fair market value.³⁸ The County Board does not assert that the determination of value made by the Assessor is actual or fair market value, merely that it is the value derived from the statutorily mandated methodology set forth in §77-1333. There is no information before the Commission that the County Assessor or County Board made any effort to determine if the value computed using the methodology found in §77-1333 represented the actual or fair market value of the Subject Property.

The Appraisal Report prepared for the Taxpayer contains both a sales comparison approach and an income approach to valuation. These valuation determinations are then weighted and reconciled into a final determination of value, and while weighted more heavily in favor of the income approach to value based on the nature of the Subject Property, the sales comparison approach was also considered. The Commission finds the Taxpayer's Appraisal to be more persuasive evidence of actual value of the Subject Property for tax year 2018.

The Commission finds that the Appraisal Report is clear and convincing evidence that the County Board's decision for tax year 2018 was arbitrary or unreasonable. The Commission also finds the Appraisal Report to be clear and convincing evidence that the actual value of the Subject Property for tax year 2018 is \$1,350,600.

Valuation for the 2019 and 2020 tax years

For tax years 2019 and 2020 the County Assessor merely carried forward the prior years' value and did not determine a value using the methodology found in Neb. Rev. Stat. § 77-1333, or any other method of valuation prescribed by statute. The Commission finds that this is clear and convincing evidence that the County Board's decision for tax years 2019 and 2020 were arbitrary and unreasonable.

³⁸ Neb. Rev. Stat. 77-201 (Reissue 2018)

The record before the Commission does not contain a determination of value for the Subject Property using the methodology set forth in Neb. Rev. Stat. §77-1333(9) for tax years 2019 or 2020. The Taxpayer's Appraisal does not adjust its determination of value for tax years 2019 or 2020, and the appraiser that prepared the Taxpayer's Appraisal did not testify before the Commission. Mr. Singh testified that in his opinion the value of the Subject Property would increase slightly from the 2018 value for tax years 2019 and 2020, but he presented no information to support this testimony or quantify the increase in market value. Nor does the Commission have enough information in the record to justify or quantify an increase in the assessed value of the Subject Property

As noted above, the County Board did not present any information regarding the actual value of the Subject Property for tax years 2019 and 2020 beyond the evidence that the 2018 valuation was carried forward for those tax years. However, the valuation history of a 65-unit low-income housing project in Lincoln County shows that its valuation decreased from tax year 2018 to tax year 2019 and decreased again from tax year 2019 to tax year 2020³⁹. Again, the record does not show how the income approach calculation for rent restricted housing projects was made for tax years 2019 and 2020. Thus, the Commission cannot justify or quantify any decrease in the assessed value of the Subject Property.

The Commission has the authority to "consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal."⁴⁰ As stated above, the Taxpayer has presented clear and convincing evidence that the County Board's valuation of the Subject Property for tax years 2019 and 2020 was arbitrary and unreasonable. Therefore, the Commission is unable to affirm the County Board's valuation of the Subject Property for tax years 2019 and 2020.

The Commission may "make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed."⁴¹ As stated above, the Commission has found that the assessed value of the Subject Property for tax year 2018 is \$1,350,600. Neither party has provided competent evidence on the record to justify or quantify any increase or decrease to the assessed value of the Subject Property for tax years 2019 and 2020. The Commission must still resolve this dispute. Faced with this record the Commission

³⁹ Ex. 7:13 to 7:26.

⁴⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018)

⁴¹ Neb. Rev. Stat. § 77-5017(1) (Reissue 2018)

finds and determines that the assessed value of the Subject Property for tax years 2019 and 2020 is \$1,350,600.

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 decisions were arbitrary or unreasonable.

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

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Lincoln County Board of Equalization determining the taxable value of the Subject Property for tax years 2018, 2019 and 2020 are vacated and reversed.⁴²
2. The taxable value of the Subject Property for tax year 2018, 2019 and 2020 is:
\$1,350,600
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln 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 years 2018, 2019 and 2020.

⁴² 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 12, 2022.⁴³

Signed and Sealed: August 12, 2022

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

⁴³ 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.