

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

Gordman Corporate Centers West, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 18C 0124 & 18C 0125

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

**For the Appellant:**

Deborah Smith, Member,  
Pro Se  
Gordman Corporate Centers West, LLC,

**For the Appellee:**

Jennifer D. Chrystal-Clark,  
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. PROCEDURAL HISTORY**

The Subject Property consists of two commercial parcels located in Omaha, Douglas County, Nebraska. The parcel in Case No. 18C 0124 is improved with two, two-story commercial office buildings located at 10805 Old Mill Road and 10815 Old Mill Road, with a parcel ID # 1907780722. The parcel in Case No. 18C 0125 is improved with one two-story commercial office building located at 10825 Old Mill Road, with a parcel ID # 1907780708. The legal descriptions and property record cards for the Subject Property are found at Exhibits 3-4.

The Douglas County Assessor determined that the assessed value of the Subject Property in Case No. 18C 0124 was \$7,818,400 for tax year 2018. Gordman Corporate Centers West, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$7,818,400.<sup>1</sup>

In Case No. 18C 0125, the County Assessor determined that the assessed value of the Subject Property was \$3,911,600 for tax year 2018. The Taxpayer protested this assessment to the

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<sup>1</sup> Ex 1.

County Board. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$3,911,600.<sup>2</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 18, 2020 with Commissioner Robert W. Hotz presiding. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. At the hearing, the parties stipulated to the receipt of Exhibits 1-5.

## II. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.<sup>3</sup> 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.<sup>4</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>5</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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

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<sup>2</sup> Ex 2.

<sup>3</sup> 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>4</sup> *Brenner* at 283, 811 (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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>8</sup> 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.<sup>9</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 cross appeal.<sup>10</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>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

### III. FINDINGS OF FACT

1. Deborah Smith, a Member of Gordman Corporate Centers West, LLC, testified on behalf of the Taxpayer.
2. Micaela Larsen, a certified residential appraiser employed by the County Assessor as a real estate specialist, testified on behalf of the County Board.
3. The Taxpayer purchased the Subject Property on September 4, 2017 for \$12,022,500.<sup>13</sup> The purchase included both of the parcels at issue in these appeals as well as one additional parcel.<sup>14</sup>
4. The Taxpayer's primary contentions were that the improvement square footage was calculated incorrectly, that the buildings were in much poorer condition than as rated by the County Assessor, and that the value of an adjacent parking lot was effectively assessed twice.

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<sup>8</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>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Exhibit 3:14. According to the Real Estate Transfer Statement, Form 521, no non-real property was included in the purchase (line 23), and the "current market value" of the real property was \$11,450,000.

<sup>14</sup> The parcel was identified with parcel ID # 1907780875 as a parking lot that sat adjacent to the parcel in Case No. 18C 0125 and served as one of two parking lots for the office building at 10825 Old Mill Road. A sketch of the parcels at issue is included at Exhibit 5, page 3.

5. Regarding the square footage of each building, the Taxpayer relied upon measurements made by an architectural firm per Building Owners and Managers Standards (BOMA). However, the architectural report was not offered in evidence.
6. Regarding the overall condition of the property, Deborah Smith testified as to her opinion that the Subject Properties were in poor condition. She asserted that parking lots needed to be replaced, that HVAC systems needed to be replaced, and that because of a flawed design, the windows leaked and that an entire window design and construction needed to be done.
7. Regarding the parking lot adjacent to 10825 Old Mill Road, the Taxpayer asserted that the lot was assessed separately from the adjacent parcel with the office building. The Taxpayer contended that the value of the adjacent lot was effectively included in the assessed value of the parcel at 10825 Old Mill Road. The record does not explain why the assessment of the adjacent parking lot parcel was not appealed.
8. Micaela Larsen testified that the two parcels on appeal were assessed using an income approach to value. For each parcel, the County Assessor used a Commercial Income Worksheet applying a rental rate, a vacancy and collection loss rate, an expense rate, and a capitalization rate to the rentable square footage of each building.<sup>15</sup> For the parcel at 10805 Old Mill Road, the income approach value was \$3,911,600 for building 1 and \$3,906,800 for building 2.<sup>16</sup> For the parcel at 10825 Old Mill Road, the income approach value was \$3,911,600.<sup>17</sup>
9. The County Assessor also determined the value of the land component of each parcel.<sup>18</sup> In both cases, the County Assessor valued the land component at a rate of \$10 per square foot.<sup>19</sup>
10. The value as calculated by the Commercial Income Worksheet was the total value of the parcel in each case.<sup>20</sup> In order to determine the portion of the assessed value attributable to the improvement component of each parcel, the County Assessor subtracted the land component value from the total value as determined by the Commercial Income Worksheet.

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<sup>15</sup> Exhibit 3:10-11 and Exhibit 4:8.

<sup>16</sup> Exhibit 3:10-11.

<sup>17</sup> Exhibit 4:8.

<sup>18</sup> Exhibit 3:3, Exhibit 4:3.

<sup>19</sup> Id.

<sup>20</sup> Compare Exhibit 3:3 to 3:10-11, and Exhibit 4:3 to 4:8.

11. Micaela Larsen further explained that the square footage utilized in each Commercial Income Worksheet was based upon appraisal information that had been provided by the owner of the property in 2016.
12. Larsen also testified that for tax year 2018, a downward adjustment had been made in the assessment to account for a poorer condition rating than in prior years.

## IV. OPINION

### A. 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.<sup>21</sup>

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.<sup>22</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>23</sup> 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.<sup>24</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>25</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>26</sup>

### B. Analysis

The Taxpayer's assertions regarding the square footage of each building at issue has not been supported by clear and convincing evidence. We cannot conclude that the square footage utilized

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<sup>21</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>22</sup> *Id.*

<sup>23</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>24</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>25</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>26</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

by the County Assessor to determine rental rates in the Commercial Income Worksheet was unreasonable.

The Taxpayer's assertions that the assessments of the properties should have been lower because the condition rating utilized by the County Assessor was too high is also not supported by clear and convincing evidence. Micaela Larsen testified to the contrary when she stated that adjustments relating to an inferior rating had been made in the assessment for tax year 2018.

The Taxpayer's argument regarding the adjacent parking lot warrants further analysis. Micaela Larsen testified that the adjacent parcel would have been assessed at \$10 per square foot, consistent with the assessment of the land component of each of the Subject Properties. For us to be persuaded that the adjacent parcel was effectively assessed twice, there would need to be evidence that the County Assessor added the land value to the value calculated using the Commercial Income Worksheet. There is no evidence that occurred. After determining the square footage and multiplying by \$10 per square foot, the land component of both Subject Properties was allocated from the income approach value as calculated using the Commercial Income Worksheet. We cannot speculate as to what would be done if the Taxpayer combined the adjacent parking lot parcel with the parcel at 10825 Old Mill Road.<sup>27</sup>

## 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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the decisions of the County Board should be affirmed.

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<sup>27</sup> When asked, Micaela Larsen testified that if the adjacent parcel were combined with the Subject Property, the land would still be assessed at \$10 per square foot.

## VI. ORDER

IT IS ORDERED THAT:

1. In each of Case Nos. 18C 0124 and 18C 0125, the decisions of the County Board determining the taxable value of the Subject Property for tax year 2018 are affirmed.<sup>28</sup>
2. In Case No. 18C 0124, the taxable value of the Subject Property for tax year 2018 is \$7,818,400.
3. In Case No. 18C 0125, the taxable value of the Subject Property for tax year 2018 is \$3,911,600.
4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2018.
8. This Decision and Order is effective for purposes of appeal on August 27, 2020.<sup>29</sup>

Signed and Sealed: August 27, 2020

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>28</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.

<sup>29</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.