

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

Menards Inc.,  
Appellant,

Case Nos. 18C 0130, 18C 0131, 19C 0437  
& 19C 0438

v.

**DECISION AND ORDER AFFIRMING  
THE DECISIONS OF THE DOUGLAS  
COUNTY BOARD OF EQUALIZATION**

Douglas County Board of Equalization,  
Appellee.

**For the Appellant:**

Shaun M. James,  
Smith Gardner & Slusky

**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. THE SUBJECT PROPERTIES**

The Subject Properties are two commercial parcels improved with Menards home improvement stores, located at 750 N. 205th Street (18C 0130, 19C 0438) and 708 N. 120th Street (18C 0131, 19C 0437), Omaha, Douglas County, Nebraska. The legal descriptions and property record cards for the Subject Properties are found at Exhibits 5 (18C 0130), 6 (19C 0438), 7 (18C 0131), and 8 (19C 0437).

**II. PROCEDURAL HISTORY**

For each of the Subject Properties, for tax years 2018 and 2019, the Douglas County Assessor (the County Assessor) assessed the parcel, Menards Inc. (Menards) protested the assessment and requested a lower assessed value, and the Douglas County Board of Equalization (the County Board) determined the taxable value of the Subject Property, as shown in the table below.<sup>1</sup>

---

<sup>1</sup> The information in the table, which includes the value indicated by an appraisal by George McKinney, comes from Exhibits 1-4, 5:10-12, 6:16, 7:10-12, 8:13, 9:3, and 10:3. In the course of the hearing, the parties informed the Commission that the Notifications of Board Action for the 2018 appeals incorrectly listed the original assessed amounts, but that the amounts were listed correctly in the referee reports from the 2018 protest proceedings.

	<b>Subject Property</b>	<b>County Assessor</b>	<b>Menards</b>	<b>County Board</b>	<b>McKinney Appraisal</b>
<b>18C 0130</b>	750 N. 205th	\$11,404,300	\$8,309,400	\$10,022,100	N/A
<b>19C 0438</b>	750 N. 205th	\$11,478,900	\$7,500,000	\$11,478,900	\$7,700,000
<b>18C 0131</b>	708 N. 120th	\$10,690,100	\$7,809,000	\$9,343,700	N/A
<b>19C 0437</b>	708 N. 120th	\$10,447,600	\$7,000,000	\$10,447,600	\$7,500,000

Menards appealed each of the County Board’s determinations to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 16, 2021, with Commissioner Hotz presiding. Exhibits 1 through 28 were admitted. Chad Zeznanski, George D. McKinney, and Linda Rowe testified at the hearing.

### **III. STANDARD OF REVIEW**

The Commission’s review of a 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 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>

---

<sup>2</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, 759 N.W.2d 464, 473 (2009).

<sup>3</sup> *Brenner* at 283, 753 N.W. at 811 (citations omitted).

<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).

Menards 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 Menards establishes that the County Board's valuation was unreasonable or arbitrary.<sup>8</sup>

The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>9</sup> The Commission may also take notice of judicially cognizable facts, 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. 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.<sup>12</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>13</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>14</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

---

<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).

<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> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 645 N.W.2d 829.

value.<sup>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

## **B. Facts & Analysis**

George D. McKinney is a certified general appraiser in Nebraska and has been a licensed appraiser since 1990.<sup>18</sup> He had appraised property for Menards for approximately five to seven years as of the date of the hearing. McKinney prepared appraisals of the Subject Properties.<sup>19</sup> He certified that he performed the appraisals in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>20</sup> He personally inspected the properties while completing his appraisals<sup>21</sup> and utilized the sales comparison approach, the cost approach, and the income approach for his appraisals.<sup>22</sup> At the hearing, he testified that his primary emphasis was the sales comparison approach, while the cost and income approaches were used as secondary support. However, his appraisal reports state that the sales comparison approach “was given significant consideration,” the income approach “was ... given significant weight,” and the cost approach “was given little to no consideration” in reaching his final opinion of value.<sup>23</sup>

McKinney selected nine recent sales as comparables for his sales comparison approach.<sup>24</sup> The same comparables were used for both Subject Properties. Seven of the comparables were in Omaha, one in Bellevue, Sarpy County, Nebraska, and one was in Council Bluffs, Iowa. In determining the per square foot (PSF) market value of the comparable properties, McKinney used the sale price divided by the square footage of the improvements without deducting the value attributable to the land.<sup>25</sup> For example, Comparable #2 had a building area of 80,000 square feet and sold for \$3,700,000, so McKinney determined that the price PSF was \$3,700,000 ÷ 80,000 square feet, or \$46.25 PSF, as opposed to \$33.62, which was the improvement sale

---

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> McKinney’s resume is found at Exhibit 9:127.

<sup>19</sup> Exhibit 9 (708 N. 120th), Exhibit 10 (750 N. 205th).

<sup>20</sup> Exhibit 9:113-114, Exhibit 10:112-113.

<sup>21</sup> Exhibit 9:3, Exhibit 10:3.

<sup>22</sup> Exhibit 9:47-50, Exhibit 10:46-48.

<sup>23</sup> Exhibit 9:108-09, Exhibit 10:107-08.

<sup>24</sup> See Exhibit 9:73 (details of the comparables at 74-92), Exhibit 10:72 (details of the comparables at 73-91).

<sup>25</sup> Exhibit 9:97, Exhibit 10:96.

price PSF.<sup>26</sup> McKinney determined that the sales comparison approach indicated a market value of \$46 PSF of improvements, or \$7,540,000, for 708 N. 120th (19C 0437)<sup>27</sup> and \$48 PSF of improvements, or \$7,790,000, for 750 N. 205th (19C 0438).<sup>28</sup>

McKinney performed his cost approach for both parcels using the Marshall & Swift Valuation Service (Marshall & Swift) costing manual.<sup>29</sup> The most notable difference between his cost approach and the cost approach performed by Linda Rowe (discussed below) was that McKinney made substantial downward adjustments for obsolescence to both properties (40% for functional obsolescence and 10% for external obsolescence), in addition to 33% physical depreciation for 708 N. 120th and 25% physical depreciation for 750 N. 205th.<sup>30</sup> The 40% functional obsolescence determination was based on limited use for alternate users in the market because the improvements are super-adequate, that is, larger than what is typically in demand in the market.<sup>31</sup> The 10% external obsolescence was based on a decline in big box retail in the Midwest region.<sup>32</sup> McKinney's cost approach indicated a value of \$8,900,000 for 708 N. 120th<sup>33</sup> and \$8,930,000 for 750 N. 205th.<sup>34</sup> McKinney's testimony did not include detailed discussion of his income approach, but the approach indicated a value of \$6,900,000 for 708 N. 120th<sup>35</sup> and \$6,900,000 for 750 N. 205th.<sup>36</sup>

McKinney's final opinions of value were \$7,500,000 for 708 N. 120th<sup>37</sup> and \$7,700,000 for 750 N. 205th.<sup>38</sup> Each of McKinney's appraisals determined "the fee simple interest in the Market Value of the subject property under market conditions existing on January 1, 2019."<sup>39</sup> McKinney testified that he could not give an opinion of value of the Subject Properties for 2018 because he had not gathered the necessary market and costing data.

---

<sup>26</sup> Exhibit 9:76, 97, Exhibit 10:75, 96.

<sup>27</sup> Exhibit 9:98.

<sup>28</sup> Exhibit 10:97 (According to the report, the indicated value for 750 N 205th was also \$46 PSF, but McKinney used \$48 PSF in his calculation of total value.).

<sup>29</sup> Exhibit 9:66-67, Exhibit 10:65-66

<sup>30</sup> Exhibit 9:70, Exhibit 10:69. Rowe made physical depreciation adjustments of 39% (708 N. 120th) and 26% (750 N. 205th) and made no adjustments for obsolescence. Exhibit 8:7, Exhibit 6:10.

<sup>31</sup> See Exhibit 9:68, Exhibit 10:67-68.

<sup>32</sup> See Exhibit 9:69, Exhibit 10:68. However, both of McKinney's appraisal reports state that the Subject Properties are located in "the downtown Kenosha area" and the brokers consulted specialized in "the sale of educational facilities." The Commission fails to see the relation Kenosha and educational facilities has to the Subject Properties.

<sup>33</sup> Exhibit 9:70.

<sup>34</sup> Exhibit 10:69.

<sup>35</sup> Exhibit 9:106; see Exhibit 9:98-105.

<sup>36</sup> Exhibit 10:105; see Exhibit 10:97-104.

<sup>37</sup> Exhibit 9:3.

<sup>38</sup> Exhibit 10:3.

<sup>39</sup> Exhibit 9:3, Exhibit 10:3.

Linda Rowe testified at the hearing for the County Board. At the time of the hearing, Rowe had been employed by the Douglas County Assessor's Office for 22 years, and she had been the manager of the commercial division for eight years. She testified to her belief that throughout the country, owners of big box stores are protesting property values using the 'dark store' theory, comparing their own property to properties that are vacant, declining, distressed sales, and properties that need a lot of repairs — in fair to poor condition. In some cases, the sale conditions restrict the future use of the properties sold, preventing the new owners from using the properties as big box or discount stores. In Rowe's opinion, this has led to properties being grossly undervalued because distressed sales, or sales with restrictions on future uses, are being used as sales comparables. Rowe testified that she is required to value property "in use," as opposed to McKinney's appraisal, which valued the Subject Properties "as if vacant."<sup>40</sup>

Rowe testified that the 2018 values for the Subject Properties were based on a 2012 assessment; the County Assessor reappraised the properties in 2016, 2017, and 2018, but each time the County Board lowered the value back to the 2012 level.<sup>41</sup> For tax year 2019, Rowe assessed the Subject Properties using the cost approach. Rowe used a CAMA (computer assisted mass appraisal) system incorporating Marshall & Swift costing values that are updated annually. Rowe did not make subjective deductions for functional or economic obsolescence because she did not believe the market supported such deductions since multiple warehouses over 200,000 square feet have recently been built in Douglas County and neighboring Sarpy County.

Rowe testified that Douglas County "is and has been booming for the last ten, eleven years." Rowe believed there was a market for a second user for the Subject Property. In November 2018, building permits for \$2.2 million in construction were taken out for the Subject Property at 750 N. 205th to add floor space and an additional lumber building. For this reason, Rowe believed that the property was underbuilt, not overbuilt. Rowe also opined that big box uses are not declining in Douglas County; big warehouses are moving to Sarpy County because no space is available in Douglas County, but there is still a need for big warehouses in Douglas County.

---

<sup>40</sup> See, e.g., Exhibit 10:61.

<sup>41</sup> The assessment history of the Subject Properties is shown at Exhibits 5:7 and 7:7, although the history does not show the 2018 reappraisal described in Rowe's testimony. Other documents in the record are also inconsistent as to the original assessed value of the Subject Properties for 2018.

Rowe discussed concerns with McKinney's comparable sales. According to Rowe, the International Association of Assessing Officers (IAAO) and the Nebraska Property Assessment Division, Department of Revenue, discourage the use of distressed sales as comparables for setting value for other properties. Rowe defined distressed sales to include sales of property whose owners were in bankruptcy.

Rowe testified that McKinney's Comparable Sale #1,<sup>42</sup> was a Shopko store. At the time of the sale Shopko was bankrupt and the property was vacant. In Rowe's opinion, this sale was a distressed sale.

McKinney's Comparable #2<sup>43</sup> was also a Shopko store, which was vacant at the time of the sale, and the buyer spent over \$2 million renovating the property for use. The tenant at the time of the hearing was At Home, a furniture sales and service operation.<sup>44</sup> In Rowe's opinion, this sale was a distressed sale. Additionally, the property was in Council Bluffs, Iowa, which Rowe considered to be a different and weaker market from the markets where the Subject Properties are located. Rowe testified that 12990 West Center Road<sup>45</sup> was also an At Home store, but was in Omaha, Douglas County, Nebraska. At Home was the third-generation tenant for the 12990 West Center Road property. The property sold in 2015, when it was unrenovated and in fair condition, for \$72.80 PSF (\$50.21 PSF excluding the assessed land value).<sup>46</sup> By contrast, Comparable #2 sold for \$46.25 PSF (\$33.62 PSF excluding the assessed land value).<sup>47</sup>

Comparable #3<sup>48</sup> was occupied by Shopko at the time of the sale; it sold in September 2017 for \$68.70 PSF. After the sale, Shopko terminated its lease and moved out; and the property was sold again for approximately \$60 PSF, 12.7% less than when occupied. Comparable #3 was in Bellevue, Sarpy County, Nebraska.

Comparable #4<sup>49</sup> was a supermarket, which Rowe did not consider comparable to the Subject Properties. Comparable #5<sup>50</sup> was a health club with tennis courts and a swimming pool,

---

<sup>42</sup> Exhibits 9:74-9:75, 10:73-74.

<sup>43</sup> Exhibits 9:76-77, 10:75-76.

<sup>44</sup> Exhibits 9:77, 10:76.

<sup>45</sup> See Exhibits 25:1, 26:15-28.

<sup>46</sup> Exhibit 25:1.

<sup>47</sup> Exhibits 9:76-77, 10:75-76.

<sup>48</sup> Exhibits 9:78-79, 10:77-78.

<sup>49</sup> Exhibits 9:80-81, 10:79-80.

<sup>50</sup> Exhibits 9:82-83, 10:81-82.

which Rowe did not consider comparable to the Subject Properties. Comparable #6<sup>51</sup> was a Gordman's store; Gordman's had also gone bankrupt and the property sat vacant for two years before being sold. In Rowe's opinion, this was a distressed sale. Comparable #7<sup>52</sup> was a K-Mart; K-Mart was bankrupt at the time of the sale. Comparable #8<sup>53</sup> was a grocery store before the sale, which Rowe did not consider comparable to the Subject Properties. Rowe had physically visited Comparable #9.<sup>54</sup> It was a vacant K-Mart, another distressed sale in Rowe's opinion. At the time of the sale, the building was "completely gutted," "stripped down to nothing," with nothing except the pillars inside holding the roof up.

Rowe also testified that many of McKinney's comparable properties were not being used for their highest and best use; some of the former Shopkos and both former K-Marts had been turned into mini-warehouses,<sup>55</sup> and she expected Comparable #6, the former Gordman's, to be turned into a museum to display the new owner's classic cars.

Rowe believed that the original assessed values of the Subject Properties were the fair market values based on the market and comparable sales. Rowe testified that the Subject Properties are currently equalized with other warehouse discount stores in Douglas County; if the values were lowered to the amounts suggested by McKinney, the Subject Properties would be assessed at \$10 to \$15 less PSF than any other warehouse discount store in Douglas County.

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>56</sup> That presumption remains until competent evidence to the contrary is presented, and the presumption disappears when competent evidence to the contrary is adduced.<sup>57</sup> When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was

---

<sup>51</sup> Exhibits 9:84-85, 10:83-84.

<sup>52</sup> Exhibits 9:86-87, 10:85-86.

<sup>53</sup> Exhibits 9:88-89, 10:87-88.

<sup>54</sup> Exhibits 9:90-91, 10:89-90.

<sup>55</sup> I.e., self-storage facilities.

<sup>56</sup> *Brenner* at 283, 753 N.W.2d at 811.

<sup>57</sup> *Id.*



performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>58</sup>

McKinney certified that his appraisals were performed according to professional appraisal standards (USPAP), and so the appraisals constitute competent evidence to rebut the presumption in favor of the decisions of the County Board. However, because McKinney did not give an opinion of value of the Subject Properties for 2018, we find that the appraisals rebut the presumption only for the 2019 tax year. For the 2018 tax year, the record contains no competent evidence to rebut the presumption in favor of the County Board's determinations for tax year 2018.

Once the presumption has been rebutted, the reasonableness of the valuation fixed by the County Board becomes one of fact based upon all the evidence presented, but the burden remains on the Taxpayer to show that the County Board's decision was unreasonable or arbitrary, by clear and convincing evidence.<sup>59</sup> We find that McKinney's appraisal does not rise to the level of clear and convincing evidence for several reasons.

First, the comparable properties used by McKinney in his sales comparison approach are not sufficiently comparable to the Subject Properties. The median size of the comparables is 80,000 square feet, which is less than half the size of either of the Subject Properties. The largest comparable is more than 53,000 square feet smaller than both Subject Properties. The comparable properties' median year built is 1982, which is more than 20 years older than either of the Subject Properties, which were built in 2003 and 2007. One of the comparables is newer than one of the Subject Properties, but none of the comparables are newer than both.

Additionally, McKinney's method of determining market value PSF for the comparable properties, by dividing the total sales price by the square footage of the improvements only, masks the significance of land as a contributor to value for the Subject Properties. The largest land area of a comparable is Comparable #6 at 8.38 acres,<sup>60</sup> but the land areas of the Subject Properties are 14.72 and 17.66 acres. This is one of the reasons McKinney's cost approach produced higher indicated values than the other approaches; the cost approach requires that the

---

<sup>58</sup> *JQH La Vista Conf. Ctr. v. Sarpy County Bd. of Equal*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>59</sup> *Id.*

<sup>60</sup> Exhibits 9:84, 10:83.

value of the land be assessed separately from the value of the improvements.<sup>61</sup> Furthermore, the land on which the Subject Properties are situated is relatively valuable due to the Subject Properties' locations, which McKinney described as "excellent."<sup>62</sup> McKinney determined that all but one of the comparable properties were inferior to the Subject Properties in location and required an upward adjustment to compensate.<sup>63</sup> McKinney's sales comparison approach brackets the comparable sales based on quality of location and land/building ratio rather than making quantitative adjustments to sale prices to account for the differences.<sup>64</sup>

The following chart shows the total land value, the assessed land values PSF, the land value PSF of improvements, the improvement PSF sale price, and the total sale price PSF of improvements for the comparable properties, as listed in McKinney's reports.<sup>65</sup> The chart also includes the same information for the two Subject Properties, with the value of improvements and the total sale PSF of improvements calculated based on McKinney's opinions of value.<sup>66</sup> The median values among only the comparable properties are highlighted.

	<b>Land Total</b>	<b>Land/PSF</b>	<b>Land/PSF Imp.</b>	<b>Imp. Sale PSF</b>	<b>Tot. Sale PSF</b>
<b>Comp 1</b>	\$ 617,600	\$2.00	\$ 6.83	\$23.03	\$29.86
<b>Comp 2</b>	\$1,010,000	\$3.80	\$12.63	\$33.62	\$46.25
<b>Comp 3</b>	\$ 992,040	\$3.00	\$14.78	\$53.92	\$68.70
<b>Comp 4</b>	\$1,373,000	\$4.01	\$15.75	\$37.47	\$53.22
<b>Comp 5</b>	\$1,575,000	\$3.00	\$ 9.72	\$41.30	\$51.02
<b>Comp 6</b>	\$ 927,358	\$2.55	\$12.16	\$21.93	\$34.09
<b>Comp 7</b>	\$ 866,000	\$2.40	\$ 7.93	\$25.49	\$33.42
<b>Comp 8</b>	\$1,226,600	\$4.70	\$18.75	\$37.70	\$56.45
<b>Comp 9</b>	\$2,343,460 <sup>67</sup>	\$6.65	\$24.04	\$22.11	\$46.15
<b>120th</b>	\$4,809,000	\$7.50	\$26.55	\$16.42	\$45.75
<b>205th</b>	\$4,309,400	\$5.60	\$39.34	\$20.89	\$47.44

<sup>61</sup> See, e.g., The Appraisal Institute, *The Appraisal of Real Estate*, 561-63, 569 (14th ed. 2013). McKinney relied upon the assessed value of the land as representative of its market value, see Exhibits 9:66, 9:70, 10:65, 10:69.

<sup>62</sup> Exhibits 9:70, 10:68.

<sup>63</sup> Exhibits 9:94, 10:93.

<sup>64</sup> See Exhibits 9:97, 10:96.

<sup>65</sup> Exhibits 9:74-91, 10:73-90. Because McKinney relied upon the assessed value of the land component of the Subject Properties as an indicator of market value in his appraisals, we do the same. Land values were determined based on assessed land values from the property record files at Exhibits 11-19.

<sup>66</sup> Land values and square footage were determined from the property record files at Exhibits 8 (708 N 120th) and 9 (750 N 205th).

<sup>67</sup> The property record file for a parcel located at this address is located at Exhibit 11, but it indicates a land area of only 1.14 acres assessed at \$186,000. The total shown in the chart is calculated based on McKinney's land area and PSF values at Exhibit 9:90-91.

As shown in this table, the total land values and land-to-building value ratios of the Subject Properties are higher than those of McKinney's comparable properties; only one out of nine comparables has a PSF land value greater than one of the Subject Properties. The market value of the improvements for the median comparable property is \$33.62 PSF,<sup>68</sup> but McKinney's opinions of value of the improvements for the Subject Properties are \$16.42 PSF and \$20.89 PSF, which are lower than any of the comparable properties.

For tax year 2019, the County Board assessed 708 N. 120th at \$34.40 PSF of improvements.<sup>69</sup> This was \$0.78 (2.32%) greater than the median PSF value of the improvements of the comparable properties, and it is well within the range of the comparable improvement PSF values, which range from \$21.93 PSF to \$53.92 PSF.<sup>70</sup> Nebraska courts have long recognized that actual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.<sup>71</sup> The evidence does not support a conclusion that there is clear and convincing evidence that the County Board's determination as to the 2019 value of 708 N. 120th was arbitrary or unreasonable.

For tax year 2019, the County Board assessed 750 N. 205th at \$44.17 PSF of improvements.<sup>72</sup> This was \$10.55 (31.4%) higher than the median of McKinney's comparables, which is significantly greater, though still within the range of the comparable improvement PSF values. However, 750 N. 205th is both larger and newer than any of the comparable properties, so even if the improvement portion is assessed higher than the majority of the comparable properties, we are not persuaded that equalization of the improvement value at the median is an appropriate remedy. Furthermore, the sale of 12990 West Center Road property, unrenovated and in fair condition, for \$50.21 PSF of improvements tends to support a higher value. McKinney's PSF value for the improvements of 750 N. 205th was \$12.73 (37.9%) lower than the median comparable, which is further from the median than the County Board's assessment.

We were also not persuaded by McKinney's subjective application of 40% functional obsolescence and 10% economic obsolescence in his cost approach. These two deductions

---

<sup>68</sup> Note that Comparable #2 is the median comparable sale in total land value (\$1,010,000), land value PSF of improvements, improvement sale price PSF of improvements (\$33.62), and total sale price PSF of improvements (\$46.25). The median assessed land price PSF is \$3.00 PSF; Comparable #2 is at \$3.80.

<sup>69</sup> \$5,638,600 improvement value ÷ 163,924 square feet, see Exhibits 4, 8:3-4.

<sup>70</sup> Exhibit 9:74-91, Exhibit 10:73-90.

<sup>71</sup> *Firethorn Inv. v. Lancaster County Bd. of Equal.*, 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

<sup>72</sup> \$7,169,500 improvement value ÷ 162,300 square feet, see Exhibits 2, 6:3-4.

reduce the indicated replacement cost new less depreciation (RCNLD) of the improvements by \$3,496,361 for 708 N. 120th and \$3,945,178 for 750 N. 205th. Without these deductions, McKinney's cost approach would indicate values of \$12,396,381 for 708 N. 120th and \$12,875,178 for 750 N. 205th, which are higher than the values determined by the County Assessor or the County Board.<sup>73</sup> Nothing in his appraisal report or his testimony shows what data McKinney relied upon to determine how much functional or economic obsolescence should be applied, and Rowe testified that the market did not support a deduction for either kind of obsolescence.

Thus, we find that McKinney's appraisals do not constitute clear and convincing evidence that the County Board's decisions for the 2019 tax year were arbitrary or unreasonable. For the 2018 tax year, the record contains no competent evidence to rebut the presumption in favor of the County Board's determinations or sufficient evidence to conclude that there was clear and convincing evidence that those determinations were arbitrary or unreasonable.

## V. CONCLUSION

In Case Nos. 18C 0130 and 18C 0131, 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. Therefore, the appeals should be denied.<sup>74</sup>

In Case Nos. 19C 0437 and 19C 0438, 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 determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable. Therefore, the decisions of the County Board should be affirmed.<sup>75</sup>

---

<sup>73</sup> Exhibits 9:70, 10:69.

<sup>74</sup> See Neb. Rev. Stat. § 77-5016(9).

<sup>75</sup> *Id.*

## VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019 are affirmed.
2. The taxable values of the Subject Properties for tax year 2018 are:  
Case No. 18C 0130: **\$10,022,100**  
Case No. 18C 0131: **\$9,343,700**
3. The taxable values of the Subject Properties for tax year 2019 are:  
Case No. 19C 0438: **\$11,478,900**  
Case No. 19C 0437: **\$10,447,600**
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 be applicable only to tax years 2018 and 2019.
8. This Decision and Order is effective for purposes of appeal on August 10, 2021.<sup>76</sup>

Signed and Sealed: August 10, 2021

---

Robert W. Hotz, Commissioner

SEAL

---

James D. Kuhn, Commissioner

---

<sup>76</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.