

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

RIGI Hospitality LLC,  
Appellant,

v.

Hall County Board of Equalization,  
Appellee.

Case No: 18C 0185

Decision and Order Reversing the Decision  
of the Hall County Board of Equalization

**For the Appellant:**

Jarrod C. Kieffer,  
Stinson LLP,  
Pro Hac Vice

Paul Gardner,  
Stinson LLP

**For the Appellee:**

Sarah Carstensen,  
Deputy Hall 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 Grand Island, Hall County, Nebraska. The parcel is improved with a 89 room hotel located at 3021 South Locust Street. The hotel was built in 1974. The legal description and property record card for the Subject Property are found at Exhibit 16.

**II. PROCEDURAL HISTORY**

The Hall County Assessor determined that the assessed value of the Subject Property was \$1,241,502 for tax year 2018. RIGI Hospitality LLC (the Taxpayer) protested this assessment to the Hall County Board of Equalization (the County Board) and requested an assessed valuation of \$600,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,241,502.<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 18, 2020, with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted

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<sup>1</sup> Exhibit 14.

a Pre-Hearing Conference Report, as ordered by the Commission. Exhibits 1 to 26 were exchanged by the parties and offered and received in evidence. Mike Bhatt, Kristi Wold, and Darrel Stanard testified at the hearing.

### 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 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 County 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

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<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 (2009).

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

<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).

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 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. 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>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 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>

#### **V. FINDINGS OF FACT**

Kristi Wold testified on behalf of the County Board. She had been the Hall County Assessor since December 2017. Wold testified that she inspected the Subject Property on April 30, 2019.

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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> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829 (2002).

<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).

She noted that a swimming pool that had been included in the value as noticed by the County Assessor and as determined by the County Board was not in service as of the effective date. She opined that the taxable value should therefore be reduced by \$68,793 to \$1,172,709. Wold also testified that the Subject Property sold for \$1,240,000 in 2015, and that the sale did not include any personal property (furniture, fixtures, or equipment). Her testimony was consistent with a Form 521, Real Estate Transfer Statement, which indicated the sale date as May 14, 2015.<sup>18</sup>

Darrel Stanard also testified on behalf of the County Board. Stanard is a licensed appraiser. Stanard recited the involvement of his appraisal firm, Stanard Appraisal Services, Inc. (Stanard Appraisal), in the assessment of the Subject Property for tax year 2018 to include being hired by the County Assessor to perform the initial assessment, being hired by the County Board to function as a referee and referee coordinator in relation to the protest proceeding,<sup>19</sup> and being hired by the County Board for purposes of preparation for and testimony at the present appeal hearing. Stanard testified that he conducted inspections of the Subject Property on July 5, 2018 and April 30, 2019. Stanard opined at the hearing that the taxable value of the Subject Property should be \$1,172,709.<sup>20</sup>

The property record file for the Subject Property indicates that the County Assessor considered both the cost approach and the income approach in determining the actual value of the property.<sup>21</sup> According to the cost approach calculation, the value of the property was \$1,241,502.<sup>22</sup> According to the income approach calculation, the value of the property was \$1,290,783.<sup>23</sup> A “Final Value Reconciliation,” is shown as \$1,241,502.<sup>24</sup> The referee’s report, dated July 5, 2018, includes an opinion of value of \$1,241,502.<sup>25</sup> The report was done by Stanard Appraisal for the County Board. A protest hearing was conducted on July 11, 2018. A “Board of Equalization Review Form,” dated July 12, 2018, and completed by Stanard Appraisal indicates that the referee made a recommendation that no change be made.<sup>26</sup> The coordinator’s notes stated: “Sale of subject supports value – Rep could not give actual rent rates or occupancy[.]”<sup>27</sup>

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<sup>18</sup> Exhibit 17:7.

<sup>19</sup> A referee may be hired by the County Board pursuant to Neb. Rev. Stat. § 77-1502.01.

<sup>20</sup> This is was explained as being the result of subtracting the assessed value of the swimming pool, \$68,793 from the taxable value determined by the County Board of \$1,241,502.

<sup>21</sup> Exhibit 16:2.

<sup>22</sup> *Id.* Replacement cost new less depreciation of \$816,666 and land value of \$424,836.

<sup>23</sup> Exhibit 16:2. The rental rate is unexplained.

<sup>24</sup> Exhibit 16:2.

<sup>25</sup> Exhibit 17:1.

<sup>26</sup> Exhibit 17:3.

<sup>27</sup> Exhibit 17:3.

The County Board followed that recommendation, determining that the taxable value was \$1,241,502, the same amount as stated as the “Final Value Reconciliation” as noted above.<sup>28</sup> In reporting its decision, the county board gave as its basis for action taken: “ADDITIONAL INFORMATION PROVIDED ACCEPTED REFEREE’S RECOMMENDATION.”<sup>29</sup>

Mike Bhatt testified on behalf of the Taxpayer. Bhatt was a member of RIGI Hospitality, LLC, the owner of the Subject Property. Bhatt testified that the Subject Property was not a franchise or “flagged” hotel. He explained that franchise hotel properties enjoy guaranteed occupancies, a member base, infrastructure, and loyalty programs. However, on the downside, he explained that franchise properties also involve an up-front fee, ongoing royalty payments, certain maintenance and upgrade requirements, and a process improvement plan. None of these criteria were quantified in terms of the actual value of the Subject Property.

Bhatt also explained that as an unflagged hotel, the Subject Property had an inferior location, lower room rates, and lower occupancy rates (20% to 40%). He stated that walk-ins and extended stay customers were thus more common, each commanding lower rates than flagged hotels.

Bhatt testified that the Taxpayer purchased the Subject Property on May 14, 2015 for \$1,240,000.<sup>30</sup> As noted above, the Real Estate Transfer Statement indicated that the sale included no personal property.<sup>31</sup> Bhatt explained that the property had been significantly damaged by a hail and wind storm on August 4, 2017. He also testified that a pipe had burst sometime in 2018 causing the need for repairs. Bhatt asserted that 20 of the 89 rooms had been out of service. The Taxpayer did not quantify any of these items in relation to the value of the Subject Property.

Profit and loss statements and estimates regarding furniture, fixtures, and equipment were received in evidence.<sup>32</sup> The Taxpayer also provided over 100 photocopies of photographs of various examples of damage to the condition of the exterior of the Subject Property, all of which were also received in evidence.<sup>33</sup>

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<sup>28</sup> Exhibit 14:1.

<sup>29</sup> *Id.*

<sup>30</sup> The Real Estate Transfer Statement, Form 521, is found at Exhibit 17:7.

<sup>31</sup> *Id.*

<sup>32</sup> Exhibit 23:1-3, and Exhibit 24:1-3.

<sup>33</sup> Exhibit 15:7-119.

## VI. ANALYSIS

Stanard Appraisal was hired by the County Assessor to complete the initial assessment. That assessment was \$1,241,502.<sup>34</sup> The property record card indicates that two approaches to value were considered in the assessment, resulting in a “Final Value Reconciliation” of \$1,241,502,<sup>35</sup> including a cost approach determination of \$1,241,502 and an income approach determination of \$1,290,783. After receiving an assessment notice of \$1,241,502, the Taxpayer filed a protest.

Once the protest was filed, the County Board hired Stanard Appraisal, the same appraisal firm that had completed the assessment, to serve as a referee in the protest proceeding.<sup>36</sup> The essence of a protest proceeding is to give a taxpayer an opportunity to protest the assessment made by a county assessor to a county board of equalization.<sup>37</sup> A referee is defined as an “impartial credentialed appraiser ... who conducts protest hearings as the representative of, and under the direction of, the county board of equalization.”<sup>38</sup> A referee may be hired by a county board to conduct the protest hearing and must make a written recommendation to the county board.<sup>39</sup> However, the county board is not required to follow the recommendation made by the referee.<sup>40</sup>

After Stanard Appraisal performed the initial assessment for the County Assessor, an employee of Stanard Appraisal<sup>41</sup> then conducted the protest proceeding and made a referee recommendation of \$1,241,502, dated July 5, 2018.<sup>42</sup> The next day, another employee of Stanard Appraisal, signing as a referee coordinator,<sup>43</sup> agreed with the recommendation and recorded the following notes: “No hearing. Owner supplied Profit/loss Statement but I need more info. Room rent rates. Occupancy [] I have some questions about expenses.” In sum, Stanard Appraisal completed the initial assessment for the county assessor and then, when acting as the appointed referee in the protest proceeding, Stanard Appraisal reviewed and then agreed with the

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<sup>34</sup> Exhibit 14:1; Exhibit 16:2.

<sup>35</sup> Exhibit 16:2.

<sup>36</sup> A referee may be hired by the County Board pursuant to Neb. Rev. Stat. § 77-1502.01. The record does not indicate whether the County Board was aware that Stanard Appraisal had conducted the initial assessment.

<sup>37</sup> See Neb. Rev. Stat. § 77-1502.

<sup>38</sup> See Title 350 Neb. Admin. Code, Chapter 50, § 001.24 (2017).  
of equalization.

<sup>39</sup> Neb. Rev. Stat. § 77-1502.01.

<sup>40</sup> *Id.*

<sup>41</sup> The referee report was signed by Josh Garris, an employee of Stanard Appraisal.

<sup>42</sup> Exhibit 17:1.

<sup>43</sup> The referee coordinator was Mark Stanard.

assessment determination that Stanard Appraisal had previously made, recommending a taxable value of \$1,241,502.<sup>44</sup>

After a hearing on July 11, 2018, the same referee coordinator signed a “Board of Equalization Review Form,” maintaining his recommendation.<sup>45</sup> The form was signed on July 12, 2018. The coordinator’s notes stated: “sale of subject supports value – Rep could not give actual rent rates or occupancy[.]”<sup>46</sup>

Upon receiving the revised recommendation from the referee, the county board set the taxable value at \$1,241,502. As noted above, the county board is not required to set the taxable value at the same amount as recommended by the referee. The county board’s decision was the same as the “Final Value Reconciliation” of \$1,241,502 as noted above.<sup>47</sup>

As of the effective date, the Subject Property was approximately 44 years old, as it was built in 1974.<sup>48</sup> As properties age, depreciation becomes more difficult to determine with accuracy. When using the cost approach, depreciation can be determined by analyzing the sales of comparable properties within the same market, or by using cost information from Marshall and Swift Valuation Service (Marshall).

In this case, the record does not reveal whether the sales of comparable properties were used to determine the depreciation rate applied to the Subject Property when using the cost approach. Instead, the record indicates that the County Assessor utilized TerraScan, a Computer Assisted Mass Appraisal system that incorporates cost data from Marshall. The property record file indicates that the following data was input into the cost approach that was performed: year built 1974 (age 44), Class C and D property,<sup>49</sup> Quality 200 (Fair),<sup>50</sup> Condition 30 or 40 (Average and Good),<sup>51</sup> and Physical Depreciation 48% to 64%.<sup>52</sup> Based upon these determinations and ratings, the replacement cost new was indicated at \$2,217,666. Total depreciation amounted to \$1,401,000, resulting in a replacement cost new less depreciation of \$816,666.<sup>53</sup> The land value was determined to be \$424,836, resulting in a total cost value of \$1,241,502.<sup>54</sup>

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<sup>44</sup> Exhibit 17:1.

<sup>45</sup> Mark Stanard signed the form. Exhibit 17:3. It is unclear from the record what prompted this additional review.

<sup>46</sup> Exhibit 17:5.

<sup>47</sup> Exhibit 16:2.

<sup>48</sup> Exhibit 16:2-3.

<sup>49</sup> Exhibit 16:2-3. The storage garage, built in 1974 was rated as Class D. The clubhouse, built in 1998, was also rated as Class D.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Exhibit 16:2-3. Physical depreciation differed for each of the improvement components, ranging from 48% to 64%.

<sup>53</sup> Exhibit 16:2.

<sup>54</sup> *Id.*

As discussed above, both Kristi Wold and Darrel Stanard testified that the determination by the County Board should not have included the value of the swimming pool, which was not in service as of the effective date.<sup>55</sup> Otherwise, each of the characteristics of the Subject Property utilized to determine the cost approach value either was not disputed, or the record contained no clear and convincing evidence that was contrary to those determinations. The evidence supported the determination that the property should be rated at fair quality and average condition. Likewise regarding the age of the property and the Class C or D determination of the property.

However, this is not the case regarding the depreciation percentages that were used. The Commission has reviewed Marshall regarding Class C hotels with fair quality and average condition. The depreciation that should be applied to this 44 year old hotel is 80%, not 64%, utilizing the appropriate Life Expectancy Guidelines and Depreciation from the Commercial tables in Marshall.<sup>56</sup> As a result, we find that the combined depreciation of the buildings and listed improvements should be \$1,602,572 rather than \$1,285,798.<sup>57</sup> The resulting replacement cost new less depreciation of the improvements should be \$431,099 rather than \$747,873.<sup>58</sup> There is no evidence to dispute the land value of \$424,836. We therefore find that the taxable value of the Subject Property for tax year 2018 should be \$855,935.<sup>59</sup>

## VII. 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.

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<sup>55</sup> This is reflected in the revised property record card at Exhibit 16:3, which does not include the swimming pool in the cost approach data.

<sup>56</sup> The Commission has examined the Life Expectancy Guidelines and Depreciation for each improvement shown on the property record file with their different ages, and we have calculated the appropriate depreciation percentages for those items.

<sup>57</sup> Using the replacement cost new figures from Exhibit 16:3:  $(\$1,325,223 \times 0.8) + (\$71,825 \times 0.8) + (\$59,428 \times 0.39) + (\$329,052 \times 0.8) + (\$195,899 \times 0.8) + (\$12,162 \times 0.8) + (\$40,082 \times 0.8) = \$1,602,572$ .

<sup>58</sup>  $\$2,033,671 - \$1,602,572 = \$431,099$ .

<sup>59</sup>  $\$431,099 + \$424,836 = \$855,935$ .



## VIII. ORDER

### IT IS ORDERED THAT:

1. The decision of the Hall County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is vacated and reversed.<sup>60</sup>
2. The taxable value of the Subject Property for tax year 2018 is: \$855,935.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall 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 2018.
7. This Decision and Order is effective for purposes of appeal on November 2, 2020.<sup>61</sup>

Signed and Sealed: November 2, 2020

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>60</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>61</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.