

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments, LLC,
Appellant,

v.

Adams County Board of Equalization,
Appellee.

Case No: 18C 0025

Decision and Order Affirming the Decision
of the Adams County Board of Equalization

For the Appellant:

Kuldip Singh, Member
Cheema Investments, LLC,
Pro Se

For the Appellee:

David Bergin
Deputy Adams 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 at 500 S. California Avenue, Hastings, in Adams County, Nebraska. The parcel is improved with nine two-bedroom and three-bedroom duplexes. The legal description and property record card for the Subject Property are found at Exhibits 1 and 2.

II. PROCEDURAL HISTORY

The Adams County Assessor (County Assessor) determined that the assessed value of the Subject Property was \$651,650 for tax year 2018. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Adams County Board of Equalization (the County Board) and requested an assessed valuation of \$413,145. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$651,650.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 26, 2019 with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits and submitted

¹ Ex 1.

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.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.² 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.³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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

² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner* at 283, 811 (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Bottorf v. Clay Cty. 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.⁹ 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

IV. APPLICABLE LAW

A. Valuation

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.¹²

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.¹³ Actual value, market value, and fair market value mean exactly the same thing.¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

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

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Id.*

¹⁴ *Omaha Country Club* at 180, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

B. Equalization

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²¹ 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.²² Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²³ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁴ If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

¹⁸ *Neb. Const.*, Art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *Id.*; *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²¹ *Cabela's Inc.* at 582, 623.

²² *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁴ *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁵ *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

V. FACTS AND ANALYSIS

Mr. Kuldip Singh testified that he was a member of Cheema Investments, LLC. Mr. Singh asserted that the Subject Property was not equalized with three comparable properties in Dawes, Custer, and Box Butte counties. These three properties, as well as the Subject Property, were built by the same builder and consisted of the same 9 two-bedroom and three-bedroom duplexes. Assessments on the three alleged comparable properties ranged from \$297,848 to \$442,000 per the testimony of Mr. Singh. No property record cards were provided for the alleged comparable properties.

Mr. Singh was unaware that the Subject Property was being assessed as a rent-restricted housing project under Nebraska law.²⁷ The Taxpayer purchased the Subject Property with several other properties on August 22, 2017, from a company that Mr. Singh said had built the properties in order to put them into the rent-restricted housing program. Mr. Singh did not know whether the Subject Property or the three comparable properties qualified for the rent-restricted housing program for tax year 2018.

The Adams County Assessor, Jackie Russell, testified the Subject Property was assessed as a rent-restricted housing project for tax year 2018 because the prior owner had submitted the rent-restricted housing forms for the same tax year. She stated that she applied the actual income and expense amounts as reported, and applied the capitalization rate as set by the Rent-Restricted Housing Projects Valuation Committee per the statutory requirements.²⁸ Based upon that calculation, it was her opinion that the actual value of the Subject Property was \$651,650.²⁹

VI. 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 determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

²⁷ See Neb. Rev. Stat. §77-1333 (Reissue 2018).

²⁸ Id.

²⁹ Exhibit 2:21.

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

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is \$651,650.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Adams County Treasurer and the Adams 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 July 30, 2019.³⁰

Signed and Sealed: July 30, 2019

Robert W. Hotz, Commissioner

SEAL

James D. Kuhn, Commissioner

³⁰ 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.