

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Champion Omaha LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18C 0260 & 19C 0483

Decision and Order Reversing the
Determinations of the Douglas County
Board of Equalization

For the Appellant:

James F. Cann,
Koley Jessen, PC, LLO

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Douglas County. The parcel is improved with a 71,501 square foot limited service hotel. The legal description and Property Record Files for the Subject Property are found at Exhibits 3 & 4.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$2,920,000 for tax year 2018. Champion Omaha LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$650,000. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$2,920,000.¹

The Douglas County Assessor determined that the assessed value of the Subject Property was \$5,150,800 for tax year 2019. Champion Omaha LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$750,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$5,150,800.²

¹ E1.

² E2.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 3, 2020, recessed, and resumed on September 21, 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 22.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.³ 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.⁴

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ The County Board need not

³ 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).

⁴ *Brenner* at 283, 811 (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁸ 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).

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.⁹

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.¹⁰ The Commission may 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.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

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.¹⁴ Actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All

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

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Id.*

¹⁵ *Omaha Country Club* at 180, 829 (2002).

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Facts & Analysis

The Taxpayer presented an appraisal report prepared by David Wellsandt, MAI, a certified general appraiser with Mitchell & Associates (Taxpayer's Appraisal).¹⁹ The Taxpayer's Appraisal contained determinations of value for the Subject Property for tax years 2018 and 2019. The Taxpayer's Appraisal is certified as being performed according to, and prepared in conformity with, professional standards. The Nebraska Supreme Court has held that when an independent appraiser using professionally approved methods of appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law to overcome the presumption in favor of the determination of the County Board.²⁰ The presumption having been rebutted, the question of whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence, with the burden of proof resting on the taxpayer.²¹

Sharon L. Gray, the on-site manager of the Subject Property, testified regarding the Subject Property. Gray was the General Manager of the Subject Property from October 2017 to the date of the hearing. Gray testified regarding the amenities and condition of the Subject Property, including the renovations that were done when the Subject Property added a fitness center, hot tub and pool in 2013. Gray testified to her experience in the hotel industry and the setting of the room rates for the Subject Property. Gray discussed the competition that the Subject Property faced as a limited service hotel based on its location and the different tiers of limited service hotel that exist in the Omaha market.

Mark Jenkins, Commercial Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office, testified regarding the assessment of hotel and motel properties in Douglas County, including the assessment of the Subject Property. Jenkins testified that the Subject Property was assessed using the income approach to value for each of the tax years at issue in these appeals. Jenkins testified that there were several different income valuation models used for determining assessed values of hotels in Douglas County, including models for full service

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁹ E5.

²⁰ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²¹ *Id.*

and limited service hotels. The Subject Property was assessed using the limited service hotel model. Jenkins did not know how many hotels' information was input into the model for limited service hotels, nor did he know whether the model incorporated data from hotels other than limited service hotels. He opined that the model included market data from more than ten of the twenty to twenty-five limited service hotels located in Douglas County. The limited service hotel model does not adjust based on location or competitiveness of the area in which the hotel is located, and the hotels valued by the model, and whose data is used in the model, were located throughout Douglas County excluding the central business district downtown. The model does not distinguish between hotels of different ages or the flag under which the hotel operates (such as AmericInn, La Quinta, Holiday Inn Express, etc.). The county's model does not account for the number of rooms when data is input into the model, even though it accounts for number of rooms in its output.

David Wellsandt testified regarding the value of the Subject Property. Wellsandt inspected the Subject Property and appraised it for tax years 2018 and 2019, as shown in the Taxpayer's Appraisal offered by the Taxpayer.²² Wellsandt considered all three approaches to value in the Taxpayer's Appraisal. However, based on the required adjustments, he determined that the cost approach was not an accurate representation of market value for the Subject Property. The sales comparison approach to value contained in the Taxpayer's Appraisal, although not fully developed, indicates that the Subject Property's per room value was within the range determined in the sales comparison analysis, albeit at the lower end of the range. Wellsandt further found that this was reasonable considering the design and lower occupancy of the Subject Property. The final reconciliation section of the report discusses the range of sales values and the reasonableness of the value determined by the income approach for the Subject Property within that range.²³ Wellsandt testified regarding the income approach to value, and the Taxpayer's Appraisal relies exclusively on the income approach to value to determine the value of the Subject Property. Within the income approach analysis Wellsandt used both a direct capitalization and a room rent multiplier method to determine value.²⁴ Wellsandt reviewed income and expense data from the Subject Property, as well as income and expense data from other hotel properties, industry publications, and other market data. After reconciling the two

²² E5.

²³ E5:109.

²⁴ E5:86-107.

different income approaches to value and accounting for FF&E (furniture, fixtures, & equipment), Wellsandt's opinion of value for the Subject Property was \$2,170,000 for both tax years at issue in these appeals.²⁵

The record before the Commission demonstrates that both Jenkins and Wellsandt relied on the income approach when determining the value of the Subject Property for the tax years at issue. The Taxpayer's Appraisal and Wellsandt's testimony explained the information and methodology utilized in determining value using the income approach. Additionally, the Taxpayer's Appraisal contains an analysis of sales to support the determination of value from the income approach. The County Board presented the Property Record Files for each of the tax years at issue showing the income approach to value determined using the County Assessor's model. The record, however, does not demonstrate the basis of the income and expense numbers utilized in the county's model. Jenkins testified that different valuation models exist for different types of hotels and motels, and he speculated as to the data that was used in the models. Given the lack of adjustments for age, location and number of rooms for the information going into or out of the limited service hotel model, and the uncertainty as to whether data from hotels other than limited service hotels was used in the model, the Commission is unable to give the model much weight.²⁶

We find Wellsandt's values for the Subject Properties persuasive. His income approach analysis and his sales analysis support the reliability of his conclusions. Additionally, his experience performing appraisals in the marketplace gives the Commission confidence in his ability to select comparable properties and to determine which values to utilize when data analysis yields a range of potential values. The Commission finds that Wellsandt's opinion accurately reflects the market value of the Subject Properties for tax years 2018 and 2019. These opinions, together with the Taxpayer's Appraisal, constitute clear and convincing evidence that the County Board's determinations were unreasonable for tax years 2018 and 2019.

²⁵ E5:109.

²⁶ "It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based." *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998).

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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

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 vacated and reversed.²⁷
2. The taxable value of the Subject Property for tax year 2018 and 2019 is: \$2,170,000.
3. 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).
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.
7. This Decision and Order is effective for purposes of appeal on December 15, 2021.²⁸

Signed and Sealed: December 15, 2021

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

²⁷ 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.

²⁸ 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.