

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

Tribedo LLC,

Case Nos: 18C 0395, 18C 0397, 18C 0398,  
18C 0399, 19C 0468, 19C 0469, 19C 0470,  
19C 0471 & 19C 0472

Tribedo II LLC,

18C 0396

Armor Storages,  
Appellants,

18C 0401, 18C 0402, 18C 0403, 19C 0473,  
19C 0474 & 19C 0475

v.

Douglas County Board of Equalization,  
Appellee.

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

**For the Appellant:**

Brian Morrissey,  
Attorney

**For the Appellee:**

Jimmie Pinkham III,  
Deputy Douglas County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property consists of eleven commercial parcels located in Douglas County; the parcel ID numbers and associated case numbers are displayed in the following table. The legal descriptions and Property Record Files (PRF) for the parcels are found at the exhibit numbers listed in the table.

<b>PID</b>	<b>Case No.</b>	<b>Party Name</b>	<b>Assessed</b>	<b>BOE Value</b>	<b>Exhibits</b>
2502390377	18C 0395	Tribedo	\$1,073,100	\$1,073,100	1, 18
	19C 0471	Tribedo	\$1,251,600	\$1,000,800	2, 19
2502390379	18C 0396	Tribedo II	\$ 502,000	\$ 502,200	3, 20
2502390387	18C 0397	Tribedo	\$ 473,800	\$ 473,800	4, 21
2502390375	18C 0398	Tribedo	\$ 253,500	\$ 253,500	5, 22
	19C 0470	Tribedo	\$ 295,700	\$ 295,700	6, 23

2502390383	18C 0399	Tribedo	\$1,191,600	\$1,191,600	7, 24
2407660000	18C 0401	Armor Stor.	\$1,469,200	\$1,469,200	8, 25
	19C 0475	Armor Stor.	\$1,613,200	\$1,613,200	9, 26
2407640000	18C 0402	Armor Stor.	\$804,200	\$804,200	10, 27
	19C 0474	Armor Stor.	\$1,030,700	\$1,030,700	11, 28
1264123027	18C 0403	Armor Stor.	\$1,443,100	\$1,443,100	12, 29
	19C 0473	Armor Stor.	\$1,787,200	\$1,787,200	13, 30
2502390427	19C 0468	Tribedo	\$554,600	\$554,600	14, 31
2502390384	19C 0469	Tribedo	\$1,593,400	\$1,319,300	15, 32
2502390386	19C 0472	Tribedo	\$232,000	\$205,600	16, 33

## II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of each parcel of the Subject Property was the value shown in the “Assessed” column of the table above. Tribedo LLC, Tribedo II LLC, and Armor Storages LLC (the Taxpayer)<sup>1</sup> protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined that the taxable value of each parcel of the Subject Property was the value shown in the “BOE Value” column of the table above.<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 March 11, 2020 with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits. The parties stipulated to the receipt of Exhibit 1 through Exhibit 34.

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<sup>1</sup> The various business entities involved have some common management and/or ownership, and all the entities were represented by Brian Morrissey at the hearing.

<sup>2</sup> The group of cases consolidated for hearing on March 11, 2020, included an additional appeal, 19C 0476, for a parcel owned by 72 Hartmann LLC. The parties stipulated to the value of that parcel in the course of the hearing, and the appeal was resolved by an order issued March 27, 2020.

### III. STANDARD OF REVIEW

The Commission's review of a 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>

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 that 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 general, technical, or scientific facts within its specialized knowledge, and it may utilize its experience,

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<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).

<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).

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>

#### IV. OPINION

##### 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>13</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>14</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>15</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>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</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>18</sup>

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>19</sup> 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.<sup>20</sup> The constitutional requirement of uniformity in taxation extends to both

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

<sup>14</sup> *Id.*

<sup>15</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

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

<sup>20</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

rate and valuation.<sup>21</sup> 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.<sup>22</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>23</sup>

## **B. Facts & Analysis**

### The Taxpayer's Evidence

The Taxpayer did not submit fee appraisals or other documentary evidence related to the Subject Property or any comparable parcel.<sup>24</sup> Instead, the Taxpayer presented the testimony of Brian Morrissey, who also acted as the Taxpayer's legal representative at the hearing. Morrissey is an attorney with an ownership or management interest in the LLCs that own the Subject Properties or in their parent companies. He was a licensed appraiser from approximately 1992 through 1999, and he is currently a real estate broker, a "credentialed" appraiser, and a general appraisal trainee. At the hearing, the parties disagreed over what weight to afford Morrissey's testimony, based on his credentials and the fact that he was not identified as a potential expert witness by the Taxpayer prior to the hearing.

An owner who is familiar with his property and knows its worth is permitted to testify as to its value.<sup>25</sup> However, a corporate officer or president is not, as such, qualified to testify as to the value of corporate property. In order to qualify, he or she must be shown to be familiar with the property and have a knowledge of values generally in the vicinity.<sup>26</sup> Although Morrissey appeared knowledgeable about the Subject Properties and the market for such properties in Douglas County, the Taxpayer's failure to introduce any supporting documentation left the Commission unable to effectively review and evaluate Morrissey's assertions and opinions. Thus, we give the most weight to Morrissey's testimony on factual issues (e.g., the topography of the parcels or the existence of encumbrances such as easements) and we give less weight to

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<sup>21</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>22</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>23</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>24</sup> Morrissey, the Taxpayer's attorney, explained that the Taxpayer expected the County Board to submit all documents provided to it in the protest process, which reportedly contained documentary evidence favorable to the Taxpayer.

<sup>25</sup> *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

<sup>26</sup> *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002).

his analytical testimony (e.g., the assertion that undesirable topography or the existence of an easement should reduce the value of the property by a certain percentage).

18C 0395 & 19C 0471

The Subject Property in 18C 0395 and 19C 0471 is an unimproved, 2.872 acre lot near West Dodge Road.<sup>27</sup> Morrissey testified that Northwest Natural Gas has an easement for a natural gas pipeline which covers approximately the westernmost 30% of the Subject Property. The Taxpayer cannot build any improvements, including parking space, on the land covered by the easement. Additionally, the only portion of the parcel that directly abuts road access is covered by the easement.<sup>28</sup>

A referee evaluated the Taxpayer's 2018 protest for the County Board and noted that the parcel received a 20% downward adjustment due to access issues and a 30% downward adjustment for "topography/irregular" in addition to a developer's discount.<sup>29</sup> The Taxpayer did not present sufficient evidence for us to conclude that these adjustments did not correctly address the impact of the easement on the Subject Property.

A referee evaluated the Taxpayer's 2019 protest for the County Board. The referee's notes indicate that the County Board reduced the value of the parcel on an equalization basis, observing that "the protested parcel has extremely similar characteristics to lots within a platted development located on the southwest corner of 180th and West Dodge Road (West Dodge Hills Subdivision). The various platted lots in this development would serve as a good basis for equalization with the subject parcels as *many of these parcels have irregular shape with limited or no platted access similar to the protested parcel* ... Recommend value change to \$8.00 per square foot of site area based on equalization."<sup>30</sup> The County Board, presumably following the recommendation of the referee, reduced the assessed value of the parcel from \$1,251,600 to \$1,000,800. The Taxpayer has not provided sufficient evidence for us to conclude that the County Board's determination of equalized value for this parcel was incorrect.

18C 0396, 18C 0397, 18C 0399, 19C 0469 & 19C 0472

These five appeals involve five separate undeveloped commercial parcels; three appeals are for tax year 2018 and two appeals are for tax year 2019. For each parcel, Morrissey asserted that

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<sup>27</sup> Exhibit 18:3-9.

<sup>28</sup> Exhibit 18:9, testimony of Morrissey.

<sup>29</sup> Exhibit 18:19.

<sup>30</sup> Exhibit 19:15, *emphasis added*.

the County Assessor applied a base value of \$15 per square foot before making various deductions to arrive at the assessed value. Morrissey opined that the base value of \$15 per square foot was too high and that the base value for each parcel should have been \$10 per square foot instead.

Neither party called a witness from the County Assessor’s office to explain the County Assessor’s methodology in more detail, and the methodology is difficult to discern from the documentary evidence alone. Case No. 18C 0396, for example, involves a 58,544.64 square foot parcel.<sup>31</sup> The assessor’s internal notes for the parcel indicate that it “was given the benefit of a Form 191 developers discount” and it has “received a -30% building restriction adjustment for greenspace restrictions.”<sup>32</sup> The documentation also includes a “LEA Values Present Worth Valuation” worksheet indicating the \$15 per square foot base price, but that worksheet is included in the documentation for each of the 2018 appeals.<sup>33</sup> Additionally, that worksheet indicates an actual value of \$643,309 in every case, despite differing sizes and assessed values on the parcels. The County Board confirmed the values set by the assessor in the three 2018 cases, but the two parcels with protests and appeals for tax year 2019 received value reductions by the County Board to a flat \$8 per square foot at the recommendation of a referee.<sup>34</sup> Following the County Board’s action on the 2019 protests, the per square foot prices of the parcels was as follows:

Case No.	Square Feet	Price Per Square Foot
18C 0396	58,544.64	\$8.58 per square foot <sup>35</sup>
18C 0397	55,234.08	\$8.58 per square foot <sup>36</sup>
18C 0399	146,230.92	\$8.15 per square foot. <sup>37</sup>
19C 0469	164,918	\$8.00 per square foot. <sup>38</sup>
19C 0472	25,700	\$8.00 per square foot. <sup>39</sup>

Under Nebraska law, the assessed value of property may be different from year to year depending upon the circumstances. For this reason, a prior year’s assessment is not relevant to

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<sup>31</sup> Exhibit 20:3.

<sup>32</sup> Exhibit 20:5.

<sup>33</sup> Exhibits 20:6, 21:6, 24:7.

<sup>34</sup> Exhibit 32:14-16, Exhibit 33:14-16.

<sup>35</sup>  $\$502,200 \div 58,544.64 \text{ sq. ft.} = \$8.58 \text{ per sq. ft.}$  See Exhibit 20:20, 20:3.

<sup>36</sup>  $\$473,800 \div 55,234.08 \text{ sq. ft.} = \$8.58 \text{ per sq. ft.}$  See Exhibit 21:20, 21:3.

<sup>37</sup>  $\$1,191,600 \div 146,230.92 \text{ sq. ft.} = \$8.15 \text{ per square foot.}$  See Exhibit 24:21, 24:3.

<sup>38</sup>  $\$1,319,300 \div 164,918 \text{ sq. ft.} = \$8.00 \text{ per square foot.}$  See Exhibit 32:3, 32:16.

<sup>39</sup>  $\$205,600 \div 25,700 \text{ sq. ft.} = \$8.00 \text{ per square foot.}$  See Exhibit 33:3, 33:16.

the subsequent year's valuation.<sup>40</sup> The values challenged by the Taxpayer are from different tax years, and they relate to parcels of widely varying sizes. Accordingly, we cannot conclude that the equalization action taken by the County Board in 2019 is appropriate to apply to the 2018 values. Furthermore, given the limited evidence in the record regarding the County Assessor's methodology for any parcel in either tax year, we cannot conclude that the use of a base value of \$10 per square foot as opposed to \$15 per square foot would render more accurate final valuations for any of the parcels involved.

18C 0398 & 19C 0470

The Subject Property in these appeals is an unimproved commercial lot located at 17335 Burt Street.<sup>41</sup> The County Assessor determined that the taxable value was \$253,500 for tax year 2018 and \$295,700 for tax year 2019, and the County Board affirmed those values for both tax years.<sup>42</sup> As with the appeals discussed above, the Taxpayer asserted that the County Assessor's methodology involved using a base value of \$15 per square foot before making deductions to arrive at the actual value. Ultimately, the parcel was valued at \$6.86 per square foot for tax year 2018,<sup>43</sup> and \$8.01 per square foot for tax year 2019.<sup>44</sup> The Taxpayer asserted that this base value was too high, and that there were no sales north of West Dodge Road from which the \$15 per square foot base value could be derived. As before, Morrissey opined that the base value of the parcel should be set at \$10 per square foot, with deductions made afterward. He also asserted that the awkward triangular shape of the parcel and the lack of access from Dodge Street via 168th Street limited its development potential.

As with the previous cases, there is little evidence in the record to establish the methodology used by the County Assessor and presumably relied upon by the County Board. The "LEA Values Present Worth Valuation" worksheets are again present in the files, but as before, they do not appear to describe the specific characteristics of the Subject Property.<sup>45</sup> The assessment notes in the record for tax year 2018 state, "this parcel has received a -20% location/topography adjustment in addition to the developer's absorption rate for 2018."<sup>46</sup> The assessment notes for

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<sup>40</sup> *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>41</sup> See Exhibit 22:3-7, Exhibit 23:3-8.

<sup>42</sup> Exhibit 5:1, Exhibit 6:1.

<sup>43</sup>  $\$253,500 \div 36,938.88 \text{ sq. ft.} = \$6.86 \text{ per square foot}$ , see Exhibit 22:3, 22:20.

<sup>44</sup>  $\$295,700 \div 36,938.88 \text{ sq. ft.} = \$8.01 \text{ per square foot}$ , see Exhibit 23:3, 23:18.

<sup>45</sup> Exhibit 22:6, 23:7. The worksheet used for tax year 2019 shows a higher conclusion of actual value, but again, it is not clear how this worksheet relates specifically to the Subject Property.

<sup>46</sup> Exhibit 23:5.

tax year 2019 state that “the value of this parcel was based upon a form 191 filing for the area and a discounted cash flow method of value figured from sales and owner supplied data from this area.”<sup>47</sup> No further explanation of the methodology is apparent from the documentary evidence, and no witnesses from the County Assessor’s office were called to explain it.<sup>48</sup> The Taxpayer did not present any documentary evidence to support its preferred methodology or its preferred actual value. Therefore, there is not enough evidence to rebut the presumption in favor of the County Board’s determination.

18C 0401 & 19C 0475, 18C 0402 & 19C 0474, 18C 0403 & 19C 0473

The Subject Property in 18C 0401 and 19C 0475 is a commercial parcel located at 1102 Northwest Radial Highway. It is improved with a neighborhood shopping center and a self-storage warehouse (a “mini-warehouse” as identified by the County Assessor).<sup>49</sup> The County Assessor and the County Board valued the parcel at \$1,469,200 for tax year 2018 and \$1,613,200 for tax year 2019,<sup>50</sup> but the difference in value is entirely attributable to the addition of non-building site improvements for tax year 2019.<sup>51</sup> The Taxpayer did not contest the assessment of the shopping center improvement or the non-building site improvements, focusing instead on the mini-warehouse.

The Subject Property in Case Nos. 18C 0402 and 19C 0474 is a 34,408 square foot commercial parcel located at 1109 N 47th Avenue. It is improved with a 5,000 square foot mini-warehouse, a 7,128 square foot mini-warehouse, and a 8,550 square foot mini-warehouse.<sup>52</sup> The County Assessor and the County Board valued the Subject Property at \$804,200 for tax year 2018 and \$1,030,700 for tax year 2019.<sup>53</sup>

The Subject Property in Case Nos. 18C 0403 and 19C 0473 is a 108,464 square foot commercial parcel located at 5655 N 71st Street. It is improved with five mini-warehouses of 6,950, 8,000, 6,075, 7,200, and 7,200 square feet.<sup>54</sup> The County Assessor and the County Board valued this parcel at \$1,443,100 for tax year 2018 and \$1,787,200 for tax year 2019.<sup>55</sup>

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<sup>47</sup> Exhibit 23:6.

<sup>48</sup> We note that the 2019 assessed value of \$8.01 per square foot is essentially the same as the taxable value determined by the County Board (\$8.00 per square foot) for the parcels in 19C 0469 and 19C 0472.

<sup>49</sup> Exhibit 25:3-13.

<sup>50</sup> Exhibit 8:1, Exhibit 9:1.

<sup>51</sup> Compare Exhibit 25:3 with Exhibit 26:3.

<sup>52</sup> Exhibit 27:3-5.

<sup>53</sup> Exhibit 10:1, 11:1.

<sup>54</sup> Exhibit 29:3-6.

<sup>55</sup> Exhibit 12:1, 13:1.

The County Board valued these parcels of the Subject Property using the income approach to value. The income approach uses data gathered from the local market to determine typical rental rates, vacancy and collection losses, operating expenses, and capitalization rates for commercial property.<sup>56</sup> The rental rate is multiplied by the square footage to calculate potential gross income, from which vacancy and collection losses and operating expenses are deducted to arrive at net operating income (NOI). The NOI is divided by the market-derived capitalization rate to determine a final indicated value for the property. The income approach produces a value for the parcel as an economic unit, i.e., including both land and improvement components.<sup>57</sup> Thus, the income approach contains four major market-derived variables: the rental rate, the vacancy and collection loss rate, the operating expense rate, and the capitalization rate. The County Assessor set the rental rates for the various mini-warehouses in a range from \$5.50 to \$6.75 per square foot.<sup>58</sup> The vacancy and collection loss rate was set at 10% for all mini-warehouses on the Subject Properties. The operating expense rates ranged from 40% to 50%. The capitalization rates ranged from 5.5% to 7%.

The Taxpayer asserted that the mini-warehouses on the Subject Property were smaller, older, and less efficient than normal for the market area. Due to this relative inefficiency, the properties require a full-time manager and maintenance support. The Taxpayer disagreed with the vacancy and collection loss rate, which it argued should be 15%, the operating expenses, which it argued should be 65%, and the capitalization rate, which it argued should be 10%. The Taxpayer did not present any evidence to support its preferred rates except the testimony of Morrissey.

Keith Nielsen testified about the County Assessor's methodology for assessing this parcel. Nielsen is not a licensed appraiser, nor does he hold the state Assessor's Certificate. He is designated as a residential evaluation specialist by the International Association of Assessing Officers (IAAO) and is in the process of completing a Certified Assessment Evaluator qualification with the IAAO. He has worked at the County Assessor's office for 21 years, and he was directly involved with the assessment of the Subject Property.

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<sup>56</sup> See Exhibit 25:12 and 25:13 for one example of the County Assessor's income approach calculation.

<sup>57</sup> Because property assessment typically requires that a value be assigned to the land and improvement components separately, the value of the land is determined based on sales in the market area. In this case, for example, the total value of the improvements indicated by the income approach (shown on Exhibits 25:12 and 25:13) is equal to the total value of the land and improvements (shown at Exhibit 25:3).

<sup>58</sup> See Exhibit 25:13, 26:13, 27:11-13, 28:11-13, 29:14-18, and 30:14-18 for the rental, vacancy and collection loss, operating expense, and capitalization rates employed by the County Assessor's office for each parcel in each tax year.

Nielsen testified that the County Assessor divides Douglas County into two market areas for the purpose of assessing mini warehouses: an “Omaha neighborhood” and a “West neighborhood.” The Subject Properties for these appeals are located in the Omaha neighborhood. Nielsen testified that he visited all of the mini warehouses in the Omaha neighborhood, approximately 95 properties, as part of a reappraisal in 2015. During that process, he measured buildings, spoke with managers, and gathered data. The rental rates, vacancy and collection loss rates, operating expense rates, and capitalization rates used to assess the Subject Property were derived from data collected during that reappraisal and in the following years. In 2018, Nielsen contacted local bankers and developers to collect information on local capitalization rates. The information he gathered indicated that capitalization rates should range from 5.5 to 7, and that rates declined from 2016 to 2018.

Morrissey’s testimony was not more persuasive than Nielsen’s analysis, which was based on extensive research within the market area of the subject property. Although Morrissey did not offer documentary evidence to support his assertions regarding income and expenses for the Subject Properties, we note that the referee who reviewed the protests for the County Board found that “the expenses appear to be overstated in several categories and would be subject to further verification” for two of the parcels in tax year 2019.<sup>59</sup> For one of the parcels, also in tax year 2019, the referee found that “actual reported expenses at 65% of gross revenue are excessive when compared to industry standards. The information presented is non-convincing to support any change in value.”<sup>60</sup> The Taxpayer has not produced sufficient evidence to rebut the presumption in favor of the County Board’s determination of value.

#### 19C 0468

The Subject Property in Case No. 19C 0468 is a 46,217.16 square foot commercial parcel, paved and used as a parking lot.<sup>61</sup> It has no other improvements. The parking lot is physically adjacent to two other parcels with similar, but not identical, ownership,<sup>62</sup> and is used by tenants of a building on one of the other parcels.<sup>63</sup> The County Assessor and the County Board each

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<sup>59</sup> Exhibit 26:22, Exhibit 28:19.

<sup>60</sup> Exhibit 30:24.

<sup>61</sup> Exhibit 31:3.

<sup>62</sup> According to Morrissey’s testimony, the ultimate majority owner of both the Subject Property and the improved parcel was Dana Partnership, which owns the various Tribedo entities involved in these appeals.

<sup>63</sup> The adjacent parcel with the building is Parcel No. 2503900426. The unimproved adjacent parcel is Parcel No. 2502390379, which is the Subject Property in Case No. 18C 0396.

valued the parcel at \$554,600 for tax year 2019. The County Assessor appears to have applied a value of \$12 per square foot to the parcel.<sup>64</sup>

The Taxpayer asserted that the Subject Property was awkward in shape, required an easement to access, and could not be further improved; it has no functionality other than to serve as a parking lot for neighboring parcels. The Taxpayer further asserted that parking spaces in the neighborhood rented for nothing or for very low rates. Accordingly, the Taxpayer argued that the parcel should be valued at \$2 to \$3 per square foot.

The referee who reviewed the protest on behalf of the County Board made the following findings:

Owner provides two properties for equalization purposes which is insufficient to support the requested change in value. However, this parcel is an integral part of parcel 2502390426 as it serves as a parking lot for the associated parcel. The assessor has valued Parcel 2502390426 on an income basis which inherently incorporates the value of this protested parcel into the adjacent parcel. As such, while no decrease in value is recommended for this parcel, a corresponding decrease of \$554,600 will be recommended for Parcel 2502390426 to avoid double valuation of this parcel.  
Recommend no change and dismissal of protest.

Morrissey testified that he believed the County Board followed the referee's recommendation to reduce the value of the associated parcel. However, the Taxpayer asserted that the Subject Property should be considered independently of any other parcel.

Although we concur with the Taxpayer's assertion that the two parcels are legally distinct, we find that there is insufficient evidence to rebut the presumption in favor of the County Board's determination as to the parcel on appeal. Particularly, it is not clear how the evaluation of the Subject Property as an "integral part" of a neighboring parcel affected the assessed value of the Subject Property, if at all. Morrissey did not present evidence of comparable parcels to support his assertion that the Subject Property should have been assessed at \$2 to \$3 per square foot as opposed to the \$12 per square foot value utilized by the County Assessor. We find that there is insufficient evidence to rebut the presumption in favor of the County Board's determination.

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<sup>64</sup> See Exhibit 31:3 ( $\$554,606 \div 46,217.16 = \$12$ ). Neither party presented testimony to explain the exact methodology utilized by the County Assessor.

## 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 all of the reasons set forth above, the appeals of the Taxpayer should be denied.

## 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 value of the Subject Property is:

18C 0395:	\$1,073,100	19C 0468:	\$554,600
18C 0396:	\$502,200	19C 0469:	\$1,319,300
18C 0397:	\$473,800	19C 0470:	\$295,700
18C 0398:	\$253,500	19C 0471:	\$1,000,800
18C 0399:	\$1,191,600	19C 0472:	\$205,600
18C 0401:	\$1,469,200	19C 0473:	\$1,787,200
18C 0402:	\$804,200	19C 0474:	\$1,030,700
18C 0403:	\$1,443,100	19C 0475:	\$1,613,200

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 and 2019.

7. This Decision and Order is effective for purposes of appeal on September 2, 2020.<sup>65</sup>

Signed and Sealed: September 2, 2020

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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>65</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.