

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

72 Hartman LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18C 0400

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

Background

1. The Subject Property is an unimproved commercial parcel located at 5615 N. 72nd Street, Omaha, Nebraska, with a legal description of: HARTMAN COMMERCIAL PARK\* LOT 1 BLOCK 0 IRREG 6.306 AC.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$769,600 for tax year 2018.
3. 72 Hartman LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$79,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$769,600 for tax year 2018.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 10, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Arun Agarwal, Managing Member of 72 Hartman LLC, was present at the hearing for the Taxpayer.
8. Keith Nielsen, an employee of the County Assessor, was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</sup> See 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).

11. When considering an appeal a presumption exists that the “board of equalization 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>
12. 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>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A 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>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that the Subject Property was valued excessively when compared to similar properties in the same area.
17. The Subject Property is 274,863 square feet (6.31 acres) and was valued at \$769,600 for tax year 2018, which is \$2.80 per square foot.
18. The Taxpayer provided evidence of several parcels in close proximity to the Subject Property and the assessment per square foot for each parcel.
19. Of the parcels presented, the most similar to the Subject Property in size, location, and other characteristics is PID 0626020000, located at 7225 Fort Street (the Fort Street Property). The Fort Street Property is located approximately 300 feet south of the Subject Property on the opposite side of 72nd Street, a major thoroughfare. Both the Subject Property and the Fort Street Property have significant frontage to 72nd Street.
20. The Fort Street Property is 367,210 square feet (8.43 acres) and was valued at \$224,000 for tax year 2018, which is \$0.61 per square foot.

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<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. 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 Cty.*, 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 Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

21. Mr. Nielsen stated that the difference in valuation was partly attributable to the fact that the Subject Property was zoned for Community Commercial (CC) use, whereas the Fort Street Property was zoned for both CC use and for Developmental Reserve (DR) use.
22. Mr. Agarwal stated his opinion that this difference in zoning made no difference to the development cost or market value of the parcels.
23. Mr. Nielsen did not articulate a persuasive reason that the CC zoning would result in a per square foot value of the Subject Property more than 4.5 times greater than an otherwise similar parcel across the street.
24. To set the valuation of similarly situated property at materially different levels, i.e., value per square foot, is by definition unreasonable and arbitrary under the Uniformity Clause of the Nebraska Constitution.<sup>9</sup>
25. 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>10</sup>
26. The Commission therefore finds that the Subject Property should be equalized with the Fort Street Property at the rate of \$0.61 per square foot, a total of \$167,679.<sup>11</sup>
27. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
28. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.

## ORDER

### IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is \$167,679.
3. This Decision and Order, if no further action is taken, 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 year 2018.

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<sup>9</sup> *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999).

<sup>10</sup> *Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>11</sup> \$0.61 per square foot × 274,863 square feet = \$167,678.63, which is rounded to the nearest whole dollar.

7. This Decision and Order is effective on July 15, 2019.

Signed and Sealed: July 15, 2019

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Robert W. Hotz, Commissioner