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

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| Acorn, LLC f/k/a 3303, LLC, | Case Nos: 18C 0455 & 19C 0385 |
| Cypress LLC a/k/a 3320 LLC, | 18C 0456 & 19C 0384 |
| Faulk Enterprises Inc., | 18C 0457 & 19C 0383 |
| Nova LLC f/k/a 4550 LLC, | 18C 0458 & 19C 0382 |
| Personal Storage Center LLC f/k/a 4550 LLC, | 18C 0459 & 19C 0381 |
| Stellar LLC f/k/a 10607 LLC, Appellants, | 18C 0460 & 19C 0380 |
| v. | |
| Douglas County Board of Equalization, Appellee. | **DECISION AND ORDER AFFIRMING THE DECISIONS OF THE DOUGLAS COUNTY BOARD OF EQUALIZATION** |

**For the Appellant:**
Nicholas F. Sullivan,
Dvorak Law Group LLC

**For the Appellee:**
Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

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

## I. THE SUBJECT PROPERTIES

The Subject Properties are six commercial parcels located in Douglas County, each improved with several self-storage mini warehouses. The legal descriptions and property record files (PRF) for the Subject Properties are found at Exhibits 13 through 24.

## II. PROCEDURAL HISTORY

For each of the six parcels, in tax years 2018 and 2019, the Douglas County Assessor (the County Assessor) determined the assessed value, Appellants (the Taxpayers) protested the assessments to the Douglas County Board of Equalization (the County Board) requesting a lower assessed value, and the County Board determined the taxable value, as shown in the table below.

| Case No. | County Assessor Value[1] | Subject Property PID No. | Taxpayer's Requested Value[2] | County Board's Determination[3] |
|---|---|---|---|---|
| 18C 0455 | $4,772,700 | Acorn<br>No. 1216010108 | $3,083,000–<br>$3,320,000 | $4,772,700 |
| 19C 0385 | $5,958,300 | | $3,806,112 | $5,958,300 |
| 18C 0456 | $2,277,300 | Cypress<br>No. 2315512522 | $1,477,000–<br>$1,591,000 | $2,277,300 |
| 19C 0384 | $2,805,500 | | $1,818,368 | $2,805,500 |
| 18C 0457 | $4,448,200 | Faulk Enterprises<br>No. 1442490001 | $2,382,000–<br>$2,836,000 | $4,448,200 |
| 19C 0383 | $5,624,800 | | $2,831,800 | $5,624,800 |
| 18C 0458 | $2,980,800 | Nova<br>No. 1023590879 | $1,655,000–<br>$1,970,000 | $2,980,800 |
| 19C 0382 | $3,820,200 | | $2,329,187 | $3,820,200 |
| 18C 0459 | $2,836,300 | Personal Storage Center<br>No. 1138470056 | $1,532,000–<br>$1,824,000 | $2,836,300 |
| 19C 0381 | $3,596,600 | | $1,824,525 | $3,596,600 |
| 18C 0460 | $2,977,400 | Stellar<br>No. 2245270005 | $1,638,000–<br>$1,950,000 | $2,977,400 |
| 19C 0380 | $3,815,900 | | $2,340,810 | $3,815,900 |

The Taxpayers appealed each decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on August 31, 2020, which was recessed to allow the parties more time to present evidence. The matter was continued twice, and ultimately resumed and was concluded on May 25, 2021. Exhibits 1 through 45 were admitted.

[1] Values are taken from the corresponding Property Record File found in Exhibits 13-24.
[2] Values are taken from the corresponding Taxpayer's Real Property Valuation Protests found in Exhibits 25-30.
[3] Values are taken from the corresponding Notification of Board Action found in Exhibits 1-12.

## III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.[4] 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.[5]

> 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.[6]

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.[7] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[8] The Taxpayers must introduce competent evidence of actual value of the Subject Properties in order to successfully claim that the Subject Properties are overvalued.[9] The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayers establish that the County Board's valuation was unreasonable or arbitrary.[10]

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.[11] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[12] The Commission may also take notice of judicially cognizable facts and in

[4] 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, 759 N.W.2d 464, 473 (2009).
[5] *Brenner* at 283, 811 (Citation omitted).
[6] *Id.*
[7] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[8] *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[9] 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).
[10] *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).
[11] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[12] *Id.*

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.[13] The Commission's Decision and Order shall include findings of fact and conclusions of law.[14]

## IV. RELEVANT 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.[15]

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.[16] Actual value, market value, and fair market value mean exactly the same thing.[17] 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.[18] All real property in Nebraska subject to taxation shall be assessed as of January 1.[19] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[20]

### B. Equalization

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[21] The purpose of equalization of assessments is

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[13] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[14] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[15] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[16] *Id*.
[17] *Omaha Country Club* at 180, 829.
[18] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[19] Neb. Rev. Stat. § 77-1301(1) (Supp. 2020).
[20] Neb. Rev. Stat. § 77-201(1) (Reissue 2018).
[21] *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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.[22] 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.[23] 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.[24] 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.[25] The constitutional requirement of uniformity in taxation extends to both rate and valuation.[26] 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.[27] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[28]

## V. FACTS AND ANALYSIS

Craig Faulk testified at the hearing on behalf of the Taxpayers. Faulk is an officer of Faulk Enterprises Inc., which was the property management firm for all six Taxpayers on the January 1 effective dates for tax years 2018 and 2019. At the time of the hearings, the six parcels were managed by Faulk's employer, Red Hawk Services; Faulk works as a day-to-day manager for Red Hawk. Faulk has an undergraduate degree in business and holds a real estate broker's license from the State of Nebraska. Faulk is familiar with all six of the Subject Properties, and he is familiar with other self-storage facilities around the City of Omaha. Faulk created a spreadsheet for each parcel of the improvement square footage and assessed values of these and some additional properties he considered comparable to each of the six parcels of the Subject Properties for tax year 2018.[29]Faulk identified and discussed three properties he considered

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[22] *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).
[23] *Cabela's Inc.* at 582, 623.
[24] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[25] *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).
[26] *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).
[27] *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[28] *Id.* at 673, 94 N.W.2d at 50.
[29] Exhibits 25:53 (Acorn); 26:51 (Cypress); 27:53 (Faulk Enterprises); 28:50 (Nova); 29:46 (Personal Storage Center); 30:51 (Stellar).

similar to the Subject Properties.[30] The first was an Armor Storage facility located at 5636 S. 86th Circle (Armor Storage), improved with ten 5,400 square foot mini-warehouses, one of which has 1,020 square feet dedicated to office use, a total of 54,000 square feet of building.[31] The mini-warehouses were built in 1974.[32] The construction is concrete masonry, which is similar to most of the mini-warehouses on the Subject Properties. The lots are paved and fenced, like the Subject Properties. Armor Storage was assessed at $996,400 for tax year 2018, which is $18.45 per square foot of building, and $1,255,900 for tax year 2019, which is $23.26 per square foot of building.[33]

Another property Faulk considered comparable to the Subject Properties was a Storage Cave facility located at 8010 L Street (Storage Cave) improved with six mini-warehouses ranging from 7,000 to 9,600 square feet and a 1,200 square foot office building, a total of 49,650 square feet of building.[34] All of the buildings were constructed in 1985.[35] Storage Cave is similar to some of the Subject Properties in that the construction is concrete masonry with wooden trusses and asphalt shingles, and the facility has gated access and a paved lot. Storage Cave was assessed at $1,061,700 for tax year 2018, which is $21.38 per square foot of building, and $1,132,500 for tax year 2019, which is $22.81 per square foot of building.[36]

A third property Faulk considered comparable to the Subject Properties was a Metro Self Storage facility located at 3939 S 84th Street (Metro) improved with 16 mini-warehouses ranging from 3,000 to 8,750 square feet, a total of 89,452 square feet of building.[37] The buildings were constructed between 1984 and 1995.[38] Metro is similar to some of the Subject Properties in that the construction is masonry with wooden trusses and asphalt shingles and sectional doors.

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[30] The Taxpayers' exhibits contain information about several other potentially comparable properties, but Faulk's testimony focused on these three.
[31] Exhibit 40:2-18, 32-48.
[32] Exhibit 40:3-7, 33-37.
[33] Exhibits 40:60. Many of the equalization comparisons proposed by the Taxpayer involved calculating the per square foot value of the buildings on various properties discussed at the hearing. Although the witnesses often referred to these as the per square foot value of the improvements, some of the properties included miscellaneous improvements such as paving, lighting, or fencing. In each case, the Commission calculated these per square foot values based only on the square footage of the buildings and not any other improvements.
[34] Exhibit 39:2-13, 24-35.
[35] Exhibit 39:3-6, 25-28.
[36] Exhibit 39:44.
[37] Exhibit 42:2-28, 50-76.
[38] Exhibit 42:4-12, 52-60.

Metro was assessed at $2,029,600 for tax year 2018, which is $22.69 per square foot of building, and $2,210,200 for tax year 2019, which is $24.71 per square foot of building.[39]

Keith Nielsen testified at the hearing on behalf of the County Board. Nielsen has been employed as an appraiser at the Douglas County Assessor/Register of Deeds Office for the past 23 years. In 2015, Nielsen determined that mini-warehouse facilities in Douglas County had not been reappraised since approximately 2000 and needed review. He visited every facility except one,[40] approximately 120 facilities, and re-measured each building of every facility. He collected rental information and vacancy information from property managers and owners, and capitalization rate information from local brokers, bankers, appraisers, and owners. In 2018, he reappraised the facilities again. Between April and September 2018, he visited every facility, took new pictures of the buildings, and spoke with on-site managers about rental rates and vacancies. Nielsen testified that he notified Faulk before visiting the Subject Properties. Faulk instructed the on-site managers not to provide Nielsen with any information about rental rates, popular unit sizes, total number of units or vacancy rates, and Faulk did not respond to Nielsen's follow-up requests for such information.

Using the information collected during these visits, Nielsen developed two market areas, 'Far West' and 'In Town.' The Subject Properties and all of the Taxpayer's proposed comparables are located in the In Town market area. From sales and market data, Nielsen developed different valuation models for properties located in the In Town market area based upon the quality and condition ratings he assigned to each building on the property.[41] A building that was typical for the market was assigned a quality rating of average and a condition rating of average. A building that had climate control was assigned a quality rating of good and a condition rating of average. And a building in worse condition than typical for the market was assigned a quality rating of average and a condition rating of fair.[42]

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[39] Exhibit 42:96.

[40] Nielsen initially testified that he visited every facility, but subsequently testified that he had been unable to visit one due to the owner's health.

[41] Nielsen's testimony and some of the exhibits indicate that he developed more models than we have described or shown in our tables. For example, Nielsen testified that he developed a model for buildings of good quality in good condition, which he explained were typically multi-story climate-controlled buildings with climate control and on-site management. None of the Subject Properties or the proposed comparable properties meet that description.

[42] Armor Storage had buildings rated at fair / fair for tax year 2018. See Exhibit 40:33-38. Although we can determine what variables Nielsen used in his income approach calculation from the worksheets in the PRF, Nielsen did not testify as to what factors caused him to lower the quality rating from average to fair.

Each parcel of the Subject Properties was assessed using the income approach to value, which operates by calculating the potential gross income (PGI) for a property based on square footage and market rental rates. Vacancy and collection losses based on market rates are subtracted, and additional income is added, to arrive at effective gross income (EGI). Typical market expenses are subtracted to arrive at net operating income (NOI), which is then divided by a market derived capitalization rate to arrive at the indicated value.[43] Indicated values increase as rental rates and square footage increase, and decrease as expenses, vacancy and collection losses, and capitalization rates increase. Because each parcel is valued as a single economic unit, including both land and improvements, value is allocated to the land component only after the total value has been determined.

The market-derived values used for per square foot rental rates, vacancy and collection losses, total expenses, and capitalization rates in the income approach for the Subject Properties (and the Taxpayer's proposed comparable properties) were assigned based on the quality and condition ratings in Nielsen's models for tax year 2018. Based upon the Commission's review of the exhibits, it was determined that the income approach values assigned to each quality and condition combination were as follows:

| **Tax Year 2018** | | | | |
|---|---|---|---|---|
| Quality / Condition | Rental Rate | V & C Loss Rate | Expense Rate | Cap Rate |
| Good / Average | $6.50 | 10% | 50% | 6% |
| Average / Average | $5.50 | 10% | 45% | 7% |
| Average / Fair | $3.75 | 15% | 45% | 8% |
| Fair / Fair | $3.00 | 15% | 40% | 8.25% |

Office buildings were assessed at a value of $0 because the value added by any office building was reflected in Nielsen's use of on-site management as a factor in determining the quality and condition ratings of the property.

[43] See The Appraisal Institute, *The Appraisal of Real Property* 491-508 (14th ed. 2013). The capitalization rate is often referred to as the "cap rate."

The incorporation of these income approach values can be seen in the commercial income sheets included in the PRFs for each of the Subject Properties.[44] For example, the commercial income worksheets for Acorn LLC for tax year 2018 show fourteen buildings; thirteen mini-warehouses and an office building.[45] According to Faulk's testimony and the PRF, Building #1 is climate controlled by an HVAC system.[46] Under Nielsen's system, that building is assigned a quality rating of good and a condition rating of average.[47] The values on the commercial income worksheet for Building 1 correspond to the values shown in the table above for good / average properties in 2018: $6.50 rental rate, 10% vacancy and collection loss, 50% expense rate, and 6% capitalization rate.[48] Buildings 2 through 6 and 8 through 14 do not have climate control, and they are assigned quality and condition ratings of average.[49] The values on the commercial income worksheets for these buildings correspond to the values shown in the table above for average / average properties: $5.50 rental rate, 10% vacancy and collection loss, 45% expense rate, and 7% capitalization rate.[50] Building 7 is the office building; the PRF does not include a commercial income worksheet for Building 7 and it is listed on the property profile report with an actual and assessed value of $0.[51]

The same methodology was applied to the Taxpayer's comparable properties for tax year 2018. Armor Storage's ten mini-warehouse buildings were rated at fair quality and fair condition; none of these buildings had climate control.[52] The values on the commercial income worksheets for these buildings correspond to the values shown in the table above for fair / fair properties: $3.00 rental rate, 15% vacancy and collection loss, 40% expense rate, and 8.25% capitalization rate.[53] Storage Cave's six mini-warehouse buildings are all listed at average quality and fair condition; the values used in the income approach are the same as shown in the table above for average / fair properties.[54] The same applies to Metro's sixteen mini-warehouse

[44] See Exhibits 13-24.
[45] Exhibit 13:32-44.
[46] See Exhibit 13:5.
[47] See Exhibit 13:5.
[48] Exhibit 13:32.
[49] Exhibit 13:5-12.
[50] Exhibit 13:33-44.
[51] Exhibit 13:3. The 2018 PRF for Acorn LLC does not include a commercial income worksheet for Building 7.
[52] Exhibit 40:33-37.
[53] Exhibit 40:49-58.
[54] Exhibit 39:25-28, 36-42.

buildings.[55] The office building on the Storage Cave property was listed with actual and assessed values of $0.[56]

Nielsen testified that he reassessed mini-warehouse buildings again in 2018, after the 2018 assessment but before the 2019 assessment. Again, we reviewed the exhibits and found that the income approach values assigned to each quality and condition combination for tax year 2019 were as follows:

| **Tax Year 2019** | | | | |
|---|---|---|---|---|
| Quality / Condition | Rental Rate | V & C Loss Rate | Expense Rate | Cap Rate |
| Good / Average | $6.75 | 10% | 50% | 5.5% |
| Average / Average | $6.00 | 10% | 40% | 6.5% |
| Average / Fair | $3.75 | 15% | 45% | 7.5% |

Using the 2019 PRF for Acorn LLC as an example, Building 1 had climate control and was rated as good / average.[57] Its assessed value was calculated using the income approach with a rental rate of $6.75 per square foot, a vacancy and collection loss rate of 10%, an expense rate of 50%, and a capitalization rate of 5.5%. Buildings 2 through 6 and 8 through 14 lacked climate control and were all rated at average / average.[58] Their assessed values were calculated using a rental rate of $6.00 per square foot, a vacancy and collection loss rate of 10%, an expense rate of 40%, and a capitalization rate of 6.5%.[59] The result was an increase of approximately 28% in indicated value for each building rated at average / average.[60]

As in tax year 2018, the values for rental rates, vacancy and collection loss rates, expense rates, and capitalization rates displayed in the 2019 table above were applied to each of the buildings on the Subject Properties and the Taxpayers' proposed comparable properties. Armor

[55] Exhibit 42:52-60, 78-94.
[56] Exhibit 39:24.
[57] Exhibit 14:5.
[58] Exhibit 14:5-12.
[59] Exhibit 14:33-45.
[60] Compare Exhibit 13:33-44 with Exhibit 14:33-37, 39-45.

Storage's ten mini-warehouse buildings were rated average / fair instead of fair / fair as it was rated in 2018.[61]

We recite these facts to show that the differences in assessed values between the Subject Properties and the Taxpayers' proposed comparable properties are the result of the quality and condition ratings determined by Nielsen. The buildings on the Subject Properties have higher quality and/or condition ratings than the proposed comparables for each tax year. Nielsen explained that his ratings were determined based on his physical inspection of every self-storage facility in the county as well as the condition and amenities of each facility. The typical self-storage facility is gated, with security cameras and on-site management, and walk-up or drive-up storage units; this is the type of facility Nielsen rates as average / average. Nielsen also considers the rent charged by the facilities; if the rent is below market, he determines whether that is the result of management decisions or an underlying problem with the facility. Nielsen testified that there are exceptions to his typical rules of quality and condition categorization, and that he evaluates each facility on a case-by-case basis.

Nielsen discussed the basis for the quality and condition rating for each of the Taxpayer's comparable properties, which he personally inspected and photographed. Armor Storage had a manager on-site part time. The rent was lower than market average, and the vacancy rate was higher. For these reasons, Nielsen rated the property at fair condition. Nielsen described Metro as an inconveniently located facility with a mix of older and newer buildings. The facility had a mix of gravel and pavement driveways and parking, and the older buildings had roof and brick issues. The rent was lower than market average. For these reasons, Nielsen rated the property at fair condition. Nielsen testified that both properties appeared to have more maintenance issues than the Subject Properties.

Nielsen rated the Storage Cave as fair condition, but he testified that it was "right on the border" between fair and average. The Storage Cave had on-site management. The asphalt was in poor to worn-out condition in many spots, worse than the average condition of asphalt among similar facilities in the market area. The actual rental rates for the Storage Cave were lower than the market average and lower than what Nielsen believed the actual rental rates for the Subject

[61] Compare Exhibit 40:3-8 with Exhibit 40:33-38.

Properties to be. The actual vacancy rate for the Storage Cave was also higher than the market average.

Nielsen acknowledged that the Taxpayers' proposed comparable properties were similar to the Subject Properties in terms of construction and location. All the properties had multiple buildings, and many properties had buildings of different ages. Because Nielsen considered Storage Cave to be a "close call" as to whether it was in average or fair condition, the Taxpayer asserted that it was unreasonable for the Subject Properties to be assessed between $38.16 and $40.13 per square foot of building for tax year 2018 and between $48.90 and $50.09 per square foot of building for tax year 2019, when Storage Cave was assessed at $21.38 per square foot of building for 2018 and $22.81 per square foot of building in 2019.

We are not indifferent to this issue. Because of how the variables in Nielsen's income approach interact, for tax year 2018, the indicated value of an average / average mini-warehouse building is 177.5% of the indicated value of an average / fair mini-warehouse building of the same square footage. The difference is even greater for tax year 2019: the indicated value of an average / average mini-warehouse building is 213.2% of the indicated value of an average / fair building of the same square footage. However, as discussed further below, the record does not include any persuasive evidence of the actual value of either the Subject Properties or the Storage Cave except the assessments. Without that evidence, we have no way to quantify the difference in actual value between an average / average building and a "borderline" building ultimately classified as average / fair.

The Taxpayer asserted that *Zabawa v. Douglas County Board of Equalization*[62] requires us to equalize the Subject Properties with the proposed comparables. *Zabawa* dealt with two neighboring residences. Both homeowners protested their assessments; the County Board lowered the assessed value of one home but not the other. The Commission determined that the two properties were "'highly comparable' and noted that the Board had ultimately assessed the similar properties at 'greatly disparate taxable values.'"[63] The Court of Appeals determined that "when properties are comparable to the extent that Zabawa's property was comparable with [the neighboring property], the Board has the plain duty to value them similarly," but "[e]ven if the

[62] 17 Neb. App. 221, 757 N.W.2d 522 (2008).
[63] *Zabawa* at 223, 525.

properties were not comparable, the Board could not value Zabawa's real property at its market value but value [the neighboring property] at 75.8 percent of its market value."[64]

The present appeals are distinguishable from *Zabawa* in two ways. First, the evidence in *Zabawa* established the market value and the assessed value of both Zabawa's property and the neighboring property.[65] 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.[66] The Taxpayers in the present appeals did not offer any persuasive evidence of the market value of either the Subject Properties or the proposed comparable properties. Nor did the Taxpayers offer fee appraisals of the Subject Properties, which might have allowed us to determine their actual value with greater precision. Faulk's requested values were based on equalization with the assessed values of the Taxpayers' proposed comparables rather than an opinion of the actual value of the Subject Properties.[67] Without competent evidence that the actual values of the comparable properties and the Subject Properties differs from the assessed values, we cannot conclude that the properties are not assessed at a uniform percentage of actual value.

The second way in which the present appeals differ from *Zabawa* is that the evidence before us does not establish that the Subject Properties are "highly comparable" to the Taxpayers' proposed comparable properties. Although they predominantly share concrete construction, asphalt shingles, and gated access, and are all located within one market area, the facilities vary widely in size and many include one or more buildings constructed in different decades or of different materials. The record shows that Nielsen personally inspected every (or nearly every) self-storage facility in Douglas County in 2015 and again in 2018, talking to managers, taking photographs, and collecting data. His opinion of what features characterize the typical property in the market and whether a particular property is of average or fair condition carries weight. We find that the Subject Properties are not highly comparable to the Taxpayers' proposed comparable properties for equalization purposes under *Zabawa*.

[64] *Zabawa* at 227, 528.
[65] See *Zabawa* at 222-23, 525.
[66] *Cabela's Inc.* at 582, 623.
[67] See, e.g., Exhibit 25:3-4.

Finally, the Taxpayers asserted that the referee employed by the County Board to evaluate the Taxpayers' protests appears to have copied and pasted the same notes in the referee comments section of each of the County Board's protest reports.[68] The Taxpayers asserted that this rendered the County Board's decisions arbitrary and unreasonable. We disagree. A county board may hire a referee to hear protests on its behalf, but the county board is not bound by the referee's findings or recommendations.[69] Nothing in the record shows how the County Board made its decisions about the Taxpayers' protests. But even assuming the County Board reviewed and followed the referees' recommendations in each case, the recommendations to dismiss the protests have the same result as if the County Board had accepted the original assessments, which were based on Nielsen's income approach discussed above. For each tax year, the assessments were completed before the protests were heard by the referee, and Nielsen testified that he did not rely upon the referee's comments on the 2018 protests in completing the 2019 assessments. There is not clear and convincing evidence that the County Board relied upon the referee's comments in an arbitrary or unreasonable manner.

## 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 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 decisions of the County Board should be affirmed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable value of the Subject Properties for tax years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Properties for tax years 2018 and 2019 are as follows:

[68] Compare, e.g., Exhibit 13:51 (2018 Acorn) with Exhibit 15:43 (2018 Cypress); Exhibit 18:50 (2019 Faulk Enterprises) with Exhibit 20:40 (2019 Nova).
[69] Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

| **Case No.** | **PID** | **Taxable Value** |
|---|---|---|
| 18C 0455 | 1216010108 | $4,772,700 |
| 19C 0385 | 1216010108 | $5,958,300 |
| 18C 0456 | 2315512522 | $2,277,300 |
| 19C 0384 | 2315512522 | $2,805,500 |
| 18C 0457 | 1442490001 | $4,448,200 |
| 19C 0383 | 1442490001 | $5,624,800 |
| 18C 0458 | 1023590879 | $2,980,800 |
| 19C 0382 | 1023590879 | $3,820,200 |
| 18C 0459 | 1138470056 | $2,836,300 |
| 19C 0381 | 1138470056 | $3,596,600 |
| 18C 0460 | 2245270005 | $2,977,400 |
| 19C 0380 | 2245270005 | $3,815,900 |

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 June 21, 2021.[70]

Signed and Sealed: June 21, 2021

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

[70] Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Revised Statutes and Court Rules.