

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

Hurd Kearney, LLC & Hy-Vee, Inc.,  
Appellant,

v.

Buffalo County Board of Equalization,  
Appellee.

Case No: 18C 0144

Decision and Order Reversing the  
Determination of the Buffalo County  
Board of Equalization

**For the Appellant:**

Max Rodenburg,  
Rembolt Ludtke LLP

**For the Appellee:**

Andrew W. Hoffmeister,  
Deputy Buffalo County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 12.46 acre commercial parcel located in Kearney, Buffalo County, Nebraska. The parcel is improved with a 90,706 square foot Hy-Vee supermarket, a 4,374 square foot convenience store, a 1,720 square foot car wash, and associated improvements such as paving and canopies. The legal description and property record card for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Buffalo County Assessor determined that the assessed value of the Subject Property was \$13,896,935 for tax year 2018. Hurd Kearney, LLC & Hy-Vee, Inc. (collectively, the Taxpayer) protested this assessment to the Buffalo County Board of Equalization (the County Board) and requested an assessed valuation of \$7,392,900. The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$13,896,935.<sup>1</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 25, 2019, with Commissioner Hotz presiding. The parties stipulated to the admission of Exhibits 1 through 5.

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<sup>1</sup> Exhibit 1.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>2</sup> A presumption exists that the County Board "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>

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> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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>7</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the County Board's valuation was unreasonable or arbitrary.<sup>8</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>9</sup> The Commission may take notice of judicially cognizable facts and 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

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<sup>2</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>3</sup> *Brenner* at 283, 811 (Citations omitted).

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

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

<sup>6</sup> *Omaha Country Club v. Douglas County 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 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>8</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

it.<sup>10</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>11</sup>

## IV. VALUATION

### A. Applicable 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>12</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>13</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>14</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>15</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>16</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>17</sup>

### B. Summary of the Evidence

Hy-Vee built the Subject Property for its own use as a grocery store. Upon completion in 2016, Hy-Vee sold the Subject Property to Hurd Kearney for \$15,292,915 and entered into a twenty-year lease, with an option to extend the lease in five-year increments, at a rental rate higher than normal for the market.<sup>18</sup> This arrangement, in which a property is sold to an investor

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<sup>10</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Id.*

<sup>14</sup> *Omaha Country Club* at 180, 829 (2002).

<sup>15</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>17</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>18</sup> Exhibit 2:1, Exhibit 4:13.

who immediately leases it back to the seller, is known as a sale-leaseback transaction.<sup>19</sup> In December 2018, Hurd Kearney sold the Subject Property to Jennifer S. O'Connor Trust and O'Connor Properties LLC for \$16,500,000;<sup>20</sup> the Hy-Vee lease was assigned to, and assumed by, the new owners.<sup>21</sup>

### 1. Scaletty Appraisal

Thomas Scaletty testified on behalf of the Taxpayer. Scaletty is a Certified General Appraiser in Nebraska. He has an MAI designation from the Appraisal Institute. He performed a fee appraisal of the Subject Property in June 2019 retrospective to January 1, 2018.<sup>22</sup> Scaletty personally inspected the property on June 24, 2020; he also inspected the neighborhood and competitive properties. Scaletty testified that the market would not justify construction of the Subject Property unless a tenant like Hy-Vee was already committed to lease the property upon completion.

Scaletty conducted a cost approach analysis, which operates by determining the replacement cost new (RCN) of a property and making deductions for depreciation caused by physical deterioration or functional and economic obsolescence. Scaletty determined that the land component of the Subject Property had an actual value of \$2,990,000 based on sales of unimproved lots in the market area of the Subject Property.<sup>23</sup> He determined that the RCN was \$9,319,503.<sup>24</sup> He determined that the Subject Property had total depreciation and obsolescence of \$7,104,888, which included \$5,672,902 for external obsolescence because the rent due under the lease was approximately double the "achievable" market rent.<sup>25</sup> The value indicated by Scaletty's cost approach was \$5,990,000.<sup>26</sup>

Scaletty also utilized the sales comparison approach to value. He selected eight retail properties he deemed to be of similar use, size, and age<sup>27</sup> for comparison.<sup>28</sup> These comparable

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<sup>19</sup> See Exhibit 4:63, testimony of Thomas Scaletty.

<sup>20</sup> Exhibit 4:13.

<sup>21</sup> Exhibit 2:1.

<sup>22</sup> I.e., the effective date of assessment for the tax year at issue. As such, the appraisal resulted in "the appraiser's opinion of the retrospective fee simple market value of the subject property in fee simple estate, considering an exposure and marketing period of twelve months and an effective appraisal date of January 1, 2018." See Ex. 4:3.

<sup>23</sup> Exhibit 4:45, testimony of Scaletty. Scaletty made several "scrivener's errors" in preparing his appraisal report, which he corrected on the record; these included the discrepancy between the land values indicated at Exhibit 4:44 and Exhibit 4:45.

<sup>24</sup> Exhibit 4:47.

<sup>25</sup> Exhibit 4:49, testimony of Scaletty.

<sup>26</sup> Exhibit 4:48.

<sup>27</sup> The Subject Property was built in 2013, but the sales comparables were built between 1971 and 1998; the median year built for the sales comparables was 1991.

<sup>28</sup> Exhibit 4:53.

properties were located primarily in communities similar to Kearney.<sup>29</sup> Scaletty did not include any comparable sales he considered to be influenced by build-to-suit agreements, sale-leasebacks, or leased fee sales.<sup>30</sup> Scaletty made adjustments for changing market conditions, age and condition, building size, community median income, and “leakage” (loss of business to similar retailers in nearby communities).<sup>31</sup> The actual value indicated by Scaletty’s sales comparison approach was \$5,900,000.<sup>32</sup> Scaletty testified that the sale of the Subject Property in December 2018 was for an amount much greater than supported by the market, due to the existence of the long-term lease with Hy-Vee.

Scaletty also employed the income approach to value utilizing the direct capitalization method. He selected five market and contract rent properties based on similarity to the Subject Property; these were located in Fremont, Omaha, and Council Bluffs, Iowa.<sup>33</sup> Scaletty only selected properties that were not part of sale-leaseback transactions to use as rent comparables. After applying adjustments to the rental rates of these properties, he estimated a typical market rental rate of \$5 per square foot. He calculated a total potential income of \$584,723 per year, and a net operating income (NOI) of \$367,808 per year.<sup>34</sup> After analyzing market factors and risk, he applied a capitalization rate of 8.5%.<sup>35</sup> The actual value indicated by Scaletty’s income approach was \$6,080,000.<sup>36</sup> Scaletty testified that the actual rent paid by Hy-Vee on the Subject Property, \$9.65 per square foot, was significantly greater than market rental rates due to the sale-leaseback nature of the contract.

To reconcile the value indicated by the three approaches, Scaletty determined that the sales comparison approach was “the most reliable indication of market value,” followed by the income approach; the least consideration was given to the cost approach because of the large amount of external obsolescence applied.<sup>37</sup> He gave 60% weight to the sales comparison approach and 40% weight to the income approach.<sup>38</sup> Scaletty’s final opinion of value for the Subject Property was \$5,970,000 as of January 1, 2018.<sup>39</sup>

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<sup>29</sup> Exhibit 4:55-57.

<sup>30</sup> Exhibit 4:51-52, testimony of Scaletty.

<sup>31</sup> Exhibit 4:55-57.

<sup>32</sup> Exhibit 4:59.

<sup>33</sup> Exhibit 4:65-66.

<sup>34</sup> Exhibit 4:71.

<sup>35</sup> Exhibit 4:75.

<sup>36</sup> Exhibit 4:77.

<sup>37</sup> Exhibit 4:79, testimony of Scaletty.

<sup>38</sup> Exhibit 4:79-80.

<sup>39</sup> Exhibit 4:80.

## 2. Hendricksen Appraisal

Robin Hendricksen testified on behalf of the County Board. Mr. Hendricksen has been a Certified General Appraiser in Nebraska since 1975. He has worked as an appraiser for a variety of public and private employers, including Custer County, Dodge County, and Lancaster County. He appraises exclusively commercial and industrial property. He performed an appraisal of the Subject Property in 2019 with retrospective dates of January 1, 2018, and January 1, 2019.<sup>40</sup> He personally inspected the property on May 16, 2019.<sup>41</sup> Based on that inspection, he believed the physical condition of the Subject Property was good, almost new. Like Scaletty, Hendricksen did not believe the market would support building such a property unless a tenant was already in place to lease it upon completion.

Hendricksen conducted a cost approach analysis. He determined that the land component of the Subject Property had an actual value of \$2,715,000 based on sales of unimproved lots in the market area of the Subject Property.<sup>42</sup> He determined that the RCN was \$13,184,345.<sup>43</sup> He then determined that the Subject Property had depreciation of \$1,557,290.<sup>44</sup> Hendricksen considered external obsolescence, but determined that “[the Subject Property] is located in an area that has a demand for this type of development with adequate access and visibility from 2nd Avenue. This exposure gives it the ability to compete in the local marketplace so no external obsolescence is warranted.”<sup>45</sup> He concluded that the replacement cost new less depreciation (RCNLD) of the buildings was \$11,627,055; combined with the land value, the value indicated by Hendricksen’s cost approach was \$14,340,000.<sup>46</sup>

For the sales comparison approach, Hendricksen analyzed the supermarket separately from the convenience store and car wash. For the supermarket, he selected four retail properties he deemed to be of similar use, size, and age for comparison.<sup>47</sup> These comparable properties were all located in either Grand Island or Lincoln.<sup>48</sup> Hendricksen did not consider whether his comparable properties were subject to above-market leases as part of sale-leaseback transactions or build-to-suit arrangements. At least two of the four sales were disqualified by the County

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<sup>40</sup> Exhibit 3:2; the appraisal report as a whole is Exhibit 3.

<sup>41</sup> Exhibit 3:2.

<sup>42</sup> Exhibit 3:56.

<sup>43</sup> Id.

<sup>44</sup> Exhibit 3:57.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Exhibit 3:59-64.

<sup>48</sup> Id.

Assessor, which typically occurs when an assessor determines that a sale was not an arm's-length transaction.<sup>49</sup> Hendricksen made adjustments to the sale prices to account for location, visibility, size, age, quality, condition, functional utility, and site size. He determined that the value indicated by the sales comparison approach for the supermarket was \$10,615,600.<sup>50</sup> He performed a similar analysis for the convenience store and car wash, which resulted in an indicated value of \$1,605,000.<sup>51</sup> His opinion of the total value indicated by the sales comparison approach was the sum of these values, or \$12,220,000.<sup>52</sup>

Hendricksen's income approach utilized three rent comparables, one in Kearney and two in Grand Island.<sup>53</sup> Unlike Scaletty, he did not apply adjustments to the rental rates of these properties to account for size and other factors; instead, he simply divided the annual rent by the square footage to determine annual rent per square foot. As with the sales comparables, he did not exclude properties from consideration when the properties' rental rates were affected by a sale-leaseback transaction. Scaletty testified that Hendricksen's comparables Rental No. 2 and Rental No. 3 were build-to-suit arrangements and that both leases included other terms that would affect the rental rates.<sup>54</sup> The annual per square foot rental rates for the comparables were \$8.70, \$10.05, and \$8.11 per square foot; the Subject Property's actual annual rent is \$9.65 per square foot.<sup>55</sup> Using the actual rent for the Subject Property, Hendricksen determined that the Subject Property had NOI of \$899,172.<sup>56</sup> Based on data collected for sales in Grand Island, Hastings, Kearney, and Cozad since 2007, he determined that the capitalization rate should be 7.5%.<sup>57</sup> The value indicated by Hendricksen's income approach was \$11,990,000.<sup>58</sup>

In reconciling the values indicated by his three approaches to value, Hendricksen gave little weight to the cost approach and more weight to the income and sales comparison approaches. His final opinion of value for the Subject Property on January 1, 2018, was \$12,000,000.<sup>59</sup>

Ethel Skinner, the County Assessor, also testified at the hearing. Skinner holds the State Assessor's Certificate, and she is also a licensed appraiser. Before becoming Buffalo County

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<sup>49</sup> Exhibit 3:99, 3:110, testimony of Scaletty.

<sup>50</sup> Exhibit 3:64.

<sup>51</sup> Exhibit 3:65 through 3:70.

<sup>52</sup> Exhibit 3:71.

<sup>53</sup> Exhibit 3:72-74.

<sup>54</sup> See Exhibit 3:73, 3:74.

<sup>55</sup> Exhibit 3:75.

<sup>56</sup> Exhibit 3:75, 3:76.

<sup>57</sup> Exhibit 3:76-77.

<sup>58</sup> Exhibit 3:77.

<sup>59</sup> Exhibit 3:78.

Assessor, she worked as an appraiser for the Nebraska Department of Revenue from 1985 through 2010. Skinner inspected the property on May 14, 2019. She believed the location to be the second best available in Kearney,<sup>60</sup> with high growth in both residential and commercial markets. Skinner explained that all commercial parcels in Buffalo County were assessed using the income approach until 2018, but different approaches were used thereafter because the County Assessor's office had not received any new income information since 2013. She testified that she used the cost approach to determine the value of the Subject Property for 2018 and 2019, although the cost approach shown in the 2019 Property Record File (PRF) does not correspond to the assessed value for 2019.<sup>61</sup> Even though the tax year at issue for this appeal is 2018, the record does not appear to include a 2018 PRF for the Subject Property. Instead, we have a 2019 PRF provided by the County Board,<sup>62</sup> a series of printouts from the County Assessor's website included as an appendix to the Hendricksen appraisal,<sup>63</sup> and another copy of the 2019 PRF included as an appendix to the Scaletty appraisal.<sup>64</sup> Skinner testified that the assessed value of the Subject Property was \$7,444,465 for 2017, and the increase to \$13,896,935 for 2018 was the result of the methodological change from the income approach to the cost approach. She also testified that she did not believe \$13,896,935 to be the correct value for tax year 2018.<sup>65</sup>

### **C. Analysis**

Nothing in the record supports the County Board's determination of an actual value of \$13,896,935. Under Nebraska law, when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence.<sup>66</sup> Each of the parties presented such an appraisal, so we find that the presumption has been rebutted. With the presumption rebutted, the burden remains on the Taxpayer to demonstrate that the County Board's decision was arbitrary or unreasonable.

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<sup>60</sup> In Skinner's opinion, the best location in Kearney was a parcel adjacent to the Subject Property with better road access and exposure.

<sup>61</sup> Compare Exhibit 2:1 with Exhibit 2:3.

<sup>62</sup> Exhibit 2.

<sup>63</sup> Exhibit 3:87-89.

<sup>64</sup> Exhibit 4:138-147.

<sup>65</sup> She was not asked to elaborate further.

<sup>66</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).



The Taxpayer and the County Board have different views of how the actual value of the Subject Property should be determined, reflected in the dueling appraisals of Scaletty and Hendricksen. Both appraisers testified that the market would not justify construction of the Subject Property unless Hy-Vee (or another tenant with similar credit) was expected to lease it upon completion. When construction was complete, Hy-Vee sold the property to Hurd Kearney and simultaneously entered into a long-term lease at a rental rate that is, according to Scaletty's analysis, 193% of the amount the property would bring on the open market. That above-market rental rate, in turn, affects the sale price of the Subject Property, because anyone purchasing the property also receives the benefit of the excess rent for the remainder of the lease term, which was approximately 18 years as of January 1, 2018.

In selecting comparable properties for use in the sales comparison and income approaches to value, Scaletty only utilized properties that were not affected by long-term leases or above-market rental rates. By contrast, Hendricksen selected properties that *were* affected by long-term leases and above-market rental rates. This difference in the appraisals is the primary reason Scaletty reached a much lower conclusion of value than did Hendricksen.

The Subject Property must be valued at its actual value, which is the same as its market value, as determined using professionally accepted mass appraisal methods.<sup>67</sup> “The actual value of real property for tax purposes shall be the value which a willing buyer would be willing to pay for the fee simple interest.”<sup>68</sup>

Under professionally accepted mass appraisal methods, “a lease never increases the market value of real property rights to the fee simple estate. Any potential increment in excess of a fee simple estate is attributable to the particular lease contract.”<sup>69</sup> “In fee simple valuations, all rentable space is estimated at market rent levels. Any rent attributed to specific leases is disregarded in the income analysis.”<sup>70</sup>

Excess rent is the amount by which contract rent exceeds market rent at the time of the appraisal. [...] Because excess rent is the result of the lease contract rather than the income potential of the underlying real property on the valuation date, the

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<sup>67</sup> See Neb. Rev. Stat. §§ 77-201, 77-112.

<sup>68</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821, 831 (2002).

<sup>69</sup> Appraisal Institute, *The Appraisal of Real Estate* 441 (14th ed. 2013).

<sup>70</sup> *Id.* at 447.

incremental value created by a lease premium can result in a leased fee value that exceeds the fee simple value.<sup>71</sup>

This principle is illustrated by the sale of the Subject Property to the O'Connor entities for \$16.5 million in late 2018. What they purchased was not the entire bundle of rights, but rather, the rights to collect above-market rent on the property during the lease and to sell, lease, or occupy the property at the end of the lease.<sup>72</sup> Because the rent due under the lease is in excess of what the Subject Property would bring on the market, the value of the leased fee estate exceeds the value of the fee simple estate unencumbered by the lease.

When a market rent estimate for the subject property is required, the appraiser gathers, compares, and adjusts comparable rental data. [...] It is also important to ascertain that the lease represents a freely negotiated, arm's-length transaction. A lease that does not meet these criteria, such as a lease to an owner-tenant or a sale-leaseback, often does not provide a reliable indication of market rent. Since sale-leasebacks are actually financing vehicles, they should not be used in estimating market rent.<sup>73</sup>

The recognition that sale-leaseback transactions “are actually financing vehicles” impacts both the income and the sales comparison approaches to value because Nebraska law requires special financing considerations to be considered in determining what constitutes a comparable sale.<sup>74</sup> Both appraisers relied primarily or exclusively on the sales comparison and income approaches to value in their ultimate determinations of market value for the Subject Property.

With these considerations in mind, we find that Scaletty's methodology was properly designed to determine the actual value of the fee simple estate in the Subject Property, and Hendricksen's methodology was not.<sup>75</sup> This is because Scaletty selected only sales and rent comparables that were unaffected by sale-leaseback transactions or build-to-suit arrangements, whereas Hendricksen's sales and rent comparables included properties that were affected by such arrangements. We find that Scaletty's appraisal report and supporting testimony constitute clear and convincing evidence that the determination of the County Board was arbitrary or

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<sup>71</sup> Id. at 449.

<sup>72</sup> I.e., what is purchased is the leased fee estate rather than the fee simple estate. Id. at 4-6, 444-453.

<sup>73</sup> Id. at 466.

<sup>74</sup> Neb. Rev. Stat. § 77-1371(1) (Reissue 2018).

<sup>75</sup> Hendricksen's methodology may be better designed to determine the market value of the leased fee estate, but as explained above, both Nebraska law and professionally accepted mass appraisal techniques require us to value the fee simple estate for property tax purposes.

unreasonable, and we further find that the taxable value of the Subject Property for tax year 2018 was \$5,970,000.

## 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 determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

## VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Buffalo County Board of Equalization determining the taxable value of the Subject Property for tax year 2018 is vacated and reversed.<sup>76</sup>
2. The taxable value of the Subject Property for tax year 2018 is \$5,970,000.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Buffalo County Treasurer and the Buffalo 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>76</sup> 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.

7. This Decision and Order is effective for purposes of appeal on December 9, 2020.<sup>77</sup>

Signed and Sealed: December 9, 2020

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>77</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.