

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

TERRY L. JESSEN,
APPELLANT,

V.

SCOTTS BLUFF COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 19C 0009 &
19C 0010

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE SCOTTS BLUFF
COUNTY BOARD OF
EQUALIZATION

For the Appellant:
Terry L. Jessen,
Pro Se

For the Appellee:
Dave Eubanks,
Scotts Bluff County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property in Case No. 19C 0009 is a commercial parcel improved with a 21,212 square foot hotel located in Scottsbluff, Scotts Bluff County, Nebraska. The Subject Property in Case No. 19C 0010 is a commercial parcel improved with a 21,812 square foot hotel located in Scottsbluff, Scotts Bluff County, Nebraska. The legal description and Property Record Files (PRF) of the Subject Properties are found at Exhibits 3 pages 35-43 and 4 pages 26-34.

II. PROCEDURAL HISTORY

The Scotts Bluff County Assessor (Assessor) determined that the assessed value of the Subject Property in Case No. 19C 0009 was \$1,877,521 for tax year 2019. Terry L. Jessen (the Taxpayer) protested this assessment to the Scotts Bluff County Board of Equalization (the

County Board) and requested a taxable value of \$1,362,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$1,877,521.¹

The Assessor determined that the assessed value of the Subject Property in Case No. 19C 0010 was \$1,778,707 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested a taxable value of \$1,396,966. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$1,778,707.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 27, 2021. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1-5, 7, and 8 were admitted into evidence. Exhibit 6 not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.³ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁴

That presumption remains until there is competent evidence to the contrary presented, and the presumption

¹ Exhibit 1.

² Exhibit 2.

³ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁵

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ The County Board need not 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.⁹

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁰ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the

⁵ *Id.*

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

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

⁸ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

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

evaluation of the evidence presented to it.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹⁴ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁵ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and

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

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

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

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

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

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

horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ The purpose of equalization of assessments is 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.²¹ 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.²² 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.²³ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁵

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

¹⁹ Neb. Const., art. VIII, § 1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²² *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Subject Properties are both hotels located in the City of Scottsbluff, Nebraska. The PRF for each of the properties shows that they were valued for tax year 2019 using the cost approach to valuation, one of the three professionally accepted mass appraisal methods set forth in the statutes.²⁶

The Taxpayer testified that the assessed value of the Subject Properties increased at a higher percentage of value than other hotel properties in Scotts Bluff County. The Taxpayer provided a tax statement listing showing the taxable value history of the Subject Properties and two other hotel properties located in Scotts Bluff County.²⁷ The PRF for the Subject Properties were presented by the County Board.²⁸ The Taxpayer did not present the PRF for the other two Scotts Bluff County properties, however the address on the tax statement listings shows that one of the parcels is located in Morrill, Nebraska rather than Scottsbluff, Nebraska where the Subject Properties are located.

Darrell Stanard, a contract appraiser for the County Assessor's office and Angela Dillman, the Assessor, testified generally about the valuation history of the Subject Properties and equalization of values in Scotts Bluff County. Standard testified that the location of the Subject Property in a flood zone was considered when determining value and is reflected in the land value attributed to each parcel. The County Board offered a spreadsheet that showed the per room assessed values for several properties in Scotts Bluff County which the Assessor testified corrected information contained in a similar spreadsheet the Taxpayer presented to the County Board²⁹, but did not offer the PRF for any properties other than the Subject Properties.

²⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁷ E5

²⁸ E3 and E4.

²⁹ E8

B. Analysis

The Taxpayer alleged that the value of the Subject Property increased at too high a percentage of value when compared to the percentage increases of other hotel properties. The Taxpayer presented a history of the total valuation for the Subject Properties and a property located in Morrill, Nebraska.³⁰ The Taxpayer also presented the 2009 and 2019 total value for a second property identified only as “was Days Inn.”³¹ The Taxpayer did not present the PRF or any other information that showed the basis of the valuations of the other hotel properties presented. The PRF for the Subject Properties shows the determination of value used for the 2019 assessment but does not show the basis of the prior years assessed values. The assessed value for real property may be different from year to year, dependent upon the circumstances.³² Without knowing the characteristics of the properties in the current year or prior years the Commission cannot determine that differences in the increases or decreases in assessed values are based on changes in condition or additions or are arbitrary or unreasonable. For example, the spreadsheet offered by the County Board showed that one of the hotel properties had 86 rooms that were deemed unusable from one tax year to the next.³³ In order to find that the values of the Subject Properties were not equalized with other comparable properties the Commission would need to determine that the ratio of assessed value to actual value was not proportionate.³⁴ The record before the Commission does not contain any evidence to show the ratio of assessed value to actual value for the other hotel properties.

The Taxpayer alleged that the Subject Properties should be assessed using the income approach to valuation. The PRF for the

³⁰ E5:2-5

³¹ E5:1

³² *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

³³ E8

³⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

Subject Properties shows that the Assessor determined the value for the Subject Properties using the cost approach to value. The PRF did not contain an income approach to valuation and did not contain income or expense information, the appropriate capitalization rate, vacancy information, or other market data, such as room rates or vacancy rates, to use to perform the income approach. Income or expense information, the appropriate capitalization rate, vacancy information, or other market data were not offered into the record to be considered by the Commission. The record before the Commission does not contain the information necessary to perform an income approach to valuation for the Subject Properties.

No evidence or testimony was presented to demonstrate the basis of the Taxpayer's requested valuations. The Nebraska Supreme Court has held that a Taxpayer, who offered no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by county assessor, failed to meet burden of proving that value of her property was not fairly and proportionately equalized or that valuation placed upon her property for tax purposes was unreasonable or arbitrary.³⁵

The Commission finds that there is not clear and convincing evidence that the County Board's determination of value was unreasonable or arbitrary. The Commission further finds that there is not clear and convincing evidence that the valuation placed on the Subject Property when compared to the valuations placed on similar property is grossly excessive.

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 determination. The

³⁵ *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

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 determinations of the County Board are affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Scotts Bluff County Board of Equalization determining the value of the Subject Property for tax year 2019 is affirmed.
2. The assessed value of the Subject Property for tax year 2019 is:

Case No. 19C 0009

Land	\$ 45,685
<u>Improvements</u>	<u>\$1,831,935</u>
Total	\$1,877,521

Case No. 19C 0010

Land	\$ 43,519
<u>Improvements</u>	<u>\$1,735,188</u>
Total	\$1,778,707

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Scotts Bluff County Treasurer and the Scotts Bluff 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 2019.

7. This Decision and Order is effective for purposes of appeal on January 23, 2023.³⁶

Signed and Sealed: January 23, 2023

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner



³⁶ 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.