

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

BOSSELMAN MOTELS INC.,
APPELLANT,

CASE NOS: 19C 0029 &
20C 0131

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE DECISIONS
OF THE SARPY COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Brandi Bosselman,
Attorney

For the Appellee:

Andrea Gosnold-Parker,
Deputy Sarpy County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 72-unit hotel located in Sarpy County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibits 6 and 7.

II. PROCEDURAL HISTORY

The Sarpy County Assessor determined the assessed value of the Subject Property was \$4,920,000 for tax year 2019¹ and \$4,310,000 for tax year 2020². Bosselman Motels Inc. (the Taxpayer) protested these assessments to the Sarpy County Board of Equalization (the County

¹ Exhibit 1.

² Exhibit 2.

Board). The County Board determined the taxable value of the Subject Property for tax year 2019 was \$4,310,000³ and the taxable value was \$3,868,000 for tax year 2020.⁴

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on January 3, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 through 26 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁵ 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.⁶

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.⁷

³ Exhibit 1.

⁴ Exhibit 2.

⁵ 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).

⁶ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁷ *Id.*

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ 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.¹¹

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.¹² 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 evaluation of the evidence presented to it.¹³ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁴

⁸ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.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 Nebraska courts have held that 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

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

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁹ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.²¹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²² 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.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 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.²⁶ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁷

V. FINDINGS OF FACT

A. Testimony of Charles Bosselman, Jr.

The Taxpayer called Charles Bosselman, Jr. to testify. He is the Chief Executive Officer of Bosselman Enterprises, Inc. Bosselman testified the Subject Property was sold in September 2020 for \$3,000,000.²⁸ He also noted that prior to employing a broker to help

²¹ Neb. Const., art. VIII, § 1.

²² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²³ *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).

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 Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁷ *Id.* at 673, 94 N.W.2d at 50.

²⁸ Exhibits 13, 22.

secure the \$3,000,000 sale price, his highest offer for the Subject Property was \$2,800,000.

In protesting the valuation of the Subject Property, Bosselman had an internal accounting team prepare an income approach valuation of the Subject Property using the actual profit and loss figures of the Subject Property.²⁹ This resulted in a value of \$2,750,000.³⁰

Bosselman stated other hotels such as those near Grand Island, were not as impacted by the COVID-19 pandemic as freight was still moving along the interstate. But hotels in locations such as the Subject Property did experience a decline in income due to the pandemic.

Bosselman conceded that the \$3,000,000 purchase price included the furniture, fixtures, and equipment (FF&E) listed on Exhibit A of the purchase agreement.³¹ However, the Form 521 Real Estate Transfer Statement did not reflect a transfer of non-real property.³²

B. Testimony of Timothy Ederer

The County Board called Timothy Ederer to testify. He is a commercial real estate appraiser employed with the Sarpy County Assessor since 2013 and has been an appraiser for 25 years. He holds the State Assessor's Certificate.

Ederer stated he used the income approach to value the Subject Property as he believes it to be the most reliable approach to valuing income-producing properties and is used for hotel properties across the market area. Ederer noted that sales ratio analyses were conducted in 2019³³ and 2020³⁴ to ensure that assessments are within statutorily required parameters.

Ederer testified he was provided the actual income and expense statements for the Subject Property for tax years 2017 through 2019.

²⁹ Exhibit 17.

³⁰ Exhibit 17:4.

³¹ Exhibit 22:18-19.

³² Exhibit 13:1.

³³ Exhibit 9.

³⁴ Exhibit 10.

However, he stated the actual income and expenses from the Subject Property were not used in either the 2019 or 2020 assessment as the overall expense ratio was well above the norm.

Ederer stated the number of rooms was corrected to show 70 rooms as part of the 2020 protest process. He asserted there was a considerable negative effect on hotels due to the COVID-19 pandemic, including the Subject Property. However, as the assessment dates were prior to any COVID-related lockdowns, the effect of COVID would not necessarily have affected the Subject Property as of the 2020 assessment date of January 1.³⁵

Ederer testified the offer for sale of the Subject Property beginning in 2019 was not necessarily considered, as the revenue listed on the sales advertisement³⁶ matched the amounts provided to the County Assessor.

Ederer ultimately provided a revised opinion of value for the Subject Property at \$3,219,731 for tax year 2019 and \$3,216,716 for tax year 2020. These revised opinions were based upon market typicality and the actual historical income and expenses from the Subject Property, and he adjusted the value to fit within the assessed-to-sell ratios for the applicable tax year. Ederer stated that adjustments were made to include a reduction in revenue per room from \$85 to \$83. Additionally, the operating expense ratio was increased from 65% to 70%³⁷ and the vacancy and collection loss rate was adjusted from 35% to 40%.³⁸

VI. ANALYSIS

A. The 2020 Sale

The Taxpayer's argument is essentially that the \$3,000,000 purchase price agreed to in September 2020 and closed in January 2021 represent the actual value of the Subject Property as of the

³⁵ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

³⁶ Exhibit 19.

³⁷ Exhibit 3.

³⁸ Exhibit 4:17.

January 1, 2020, assessment date, relying upon the principle that, “Our law is also established that, for purposes of taxation, the terms “fair market value” and “actual value” mean exactly the same thing.”³⁹

Market value is “the amount for which property may be sold by a willing seller who is not compelled to sell it to a buyer who is willing but not compelled to buy it.”⁴⁰ In deciding market value, “the situation and condition of the property as it was at that time and all the other facts and circumstances shown by the evidence that affected or had a tendency to establish its value.”⁴¹

However, the September 2020 sale of the Subject Property is not necessarily determinative of actual value. The Court has also held:

“Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.”⁴²

While the Commission does afford some consideration to the September 2020 purchase price, “[p]ursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”⁴³ As Bosselman testified, the initial efforts to sell the Subject Property were limited to direct outreach to parties known to

³⁹ *In re Estate of Craven*, 281 Neb. 122, 127, 794 N.W.2d 406, 410 (2011) (citing *Xerox Corp. v. Karnes*, 217 Neb. 728, 350 N.W.2d 566 (1984)).

⁴⁰ *Henn v. American Family Mut. Ins. Co.*, 295 Neb. 859, 866, 894 N.W.2d 179, 184-85 (2017).

⁴¹ *Henn v. American Family Mut. Ins. Co.*, 295 Neb. 859, 866, 894 N.W.2d 179, 184-85 (2017).

⁴² *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

⁴³ *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

Bosselman and only later was the Subject Property more fully exposed to the market.

Additionally, the \$3,000,000 sale price was agreed to in September 2020,⁴⁴ which, as both parties admit, was during the height of the COVID-19 pandemic. There was no assertion or evidence that COVID-19 impacted value on January 1, 2020. Both the Taxpayer and the County Board noted the pandemic had a negative impact on the hotel industry, but not as of the effective date.

Further, Exhibit A of the purchase agreement⁴⁵ lists furniture, fixtures, and equipment (FF&E) to be sold with the Subject Property. Even though the Real Estate Transfer Statement indicated no non-real property was included in the transfer,⁴⁶ Bosselman testified the \$3,000,000 purchase price included the real property as well as the FF&E listed. The Taxpayer further argued that the inclusion of the FF&E in the purchase price would indicate the value of the Subject Property to be less than \$3,000,000. However, no evidence was adduced by the Taxpayer to quantify what, if any, value of the purchase price should be assigned to the FF&E transferred.

These issues lead the Commission to find the \$3,000,000 purchase price agreed to in September 2020 to be non-determinative of the January 1, 2020, actual value of the Subject Property.

B. The County Assessor's Revised Opinion of Value

As Ederer testified, since the filing of these appeals with the Commission, new information was provided by the Taxpayer to the County Assessor, including income and loss statements for the relevant tax years. Based upon this additional information, Ederer provided new recommended valuations for the Subject Property.⁴⁷ While the Taxpayer may stress that actual reported income and expenses be used in the Assessor's calculations, appraisal literature

⁴⁴ Exhibit 22.

⁴⁵ Exhibit 22:18-19.

⁴⁶ Exhibit 13:1.

⁴⁷ Exhibit 3:2.

provides that actual income and expenses be used only when consistent with typical market figures:

Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.⁴⁸

The Commission notes that Bosselman consulted with the Taxpayer's accountants to develop an opinion of value based upon the actual income and expense figures of the Subject Property.⁴⁹ However, there is no indication that these figures are consistent with those typical in the market, as the appraisal literature would require. As Ederer testified, the actual expenses were higher than typical.

Further, the revised figures provided by Ederer of \$3,219,731 as of January 1, 2019, and \$3,216,716 as of January 1, 2020, both dates prior to the effects of the COVID-19 pandemic in Nebraska, align with the \$3,000,000 purchase price in September 2020, when the negative effects of the pandemic would have been affecting the Subject Property.

Accordingly, the Commission finds there is competent evidence to rebut the County Board's presumption that it faithfully performed its duties based upon sufficient evidence. However, the Commission does not find the Taxpayer's evidence to be clear and convincing that the County Board's decision was arbitrary or unreasonable. Instead, the Commission finds the revised opinions of value provided by Ederer to

⁴⁸ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

⁴⁹ Exhibit 17.

be clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

VII. CONCLUSIONS OF LAW

The Commission finds 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 there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.⁵⁰

For the reasons set forth above, the determination of the County Board should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the value of the Subject Property for tax years 2019 and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 639,896
<u>Improvements</u>	<u>\$ 2,579,835</u>
Total	\$ 3,219,731

The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 639,896
<u>Improvements</u>	<u>\$ 2,576,820</u>
Total	\$ 3,216,716

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

⁵⁰ 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.

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 2019 and 2020.
7. This Decision and Order is effective for purposes of appeal on August 17, 2023.⁵¹

Signed and Sealed: August 17, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁵¹ 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.