BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

CABELA'S INC. APPELLANT, V. CHEYENNE COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NOS: 19C 0039, 20C 0034, 21C 0269, 22C 0026 DECISION AND ORDER REVERSING THE DECISIONS OF THE CHEYENNE COUNTY BOARD OF EQUALIZATION

For the Appellant:
Timothy L. Moll,
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For the Appellee:
Paul B. Schaub,
Cheyenne County Attorney

These appeals were heard before Commissioners Hotz and Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 241,272 square foot commercial office building located at 1 Cabela Drive in the city of Sidney in Cheyenne County, Nebraska. Prior to the tax years at issue, the Subject Property was used as the corporate headquarters for Cabela's, a retailer of outdoor recreation merchandise.

The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 39.

II. PROCEDURAL HISTORY

The Cheyenne County Assessor determined the assessed value of the Subject Property was $14,311,738 for each of tax years 2019 and 2020, $13,943,589 for tax year 2021, and $8,077,983 for tax year 2022. In each year, Cabela's Inc. (the Taxpayer) protested these assessments to the Cheyenne County Board of Equalization (the County Board) and requested a taxable value of $5,000,000 in tax year 2019, $9,590,000 in tax year 2020, $6,350,000 for both tax years 2021 and 2022. The County Board determined the taxable value of the Subject Property for both tax years 2019 and 2020 was $14,311,738, for tax year 2021 was $13,943,589, and for tax year 2022 was $8,077,983.[1]

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on October 23, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 to 4, 39 to 42, 44 to 48, 180, 187 to 188, and 190 to 194 were offered and admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[2] When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.[3] The first involves a presumption that the board of equalization has faithfully performed its official duties in making an assessment and has acted

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[1] Exhibits 1-4.

[2] 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).

[3] *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

upon sufficient competent evidence to justify its action.[4] 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.[5]

The second burden of proof requires that 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.[6] The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[7]

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

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[4] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).
[5] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.
[6] *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[7] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[8] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[9] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *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) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *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).

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.[12] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[13] 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.[14] The Commission's Decision and Order shall include findings of fact and conclusions of law.[15]

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.[16]

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales

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[11] *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).
[12] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[13] *Id.*
[14] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[15] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[16] Neb. Rev. Stat. § 77-112 (Reissue 2018).

comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.[17] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[18] 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.[19] All real property in Nebraska subject to taxation shall be assessed as of January 1.[20] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[21]

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.[22] "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value."[23] 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.[24] 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.[25] Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is

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[17] *Id.* (citing Neb. Rev. Stat. § 77-1371).
[18] *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.
[19] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[20] See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).
[21] Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2022).
[22] Neb. Const., art. VIII, § 1.
[23] *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
[24] *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 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).
[25] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

assessed at less than the actual value.[26] 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.[27] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[28]

V. FINDINGS OF FACT

Cabela's Purchased by Bass Pro

The acquisition of Cabela's by Bass Pro was completed sometime in 2017, at least one year prior to January 1, 2019, the effective date for the earliest of these appeals. As a result of the purchase, the Subject Property, which had functioned as corporate headquarters for Cabela's, was vacated prior to January 1, 2019.

Appraisal Reports

Both parties offered appraisal reports and the testimony of licensed appraisers to support opinions of value of the Subject Property. The appraiser for Cabela's, Gary Brandt, concluded the actual value of the Subject Property was $6,500,000 for tax year 2019, $6,350,000 for tax year 2020,[29] $6,200,000 for tax year 2021, and $6,100,000 for tax year 2022.[30] The appraiser hired by the County Board, Andrew Baker, concluded the market value of the Subject Property was $9,200,000 for

[26] *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).
[27] *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.2d at 6 (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).
[28] *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).
[29] Exhibit 188:3.
[30] Exhibit 187:3.

each of the tax years 2019 and 2020,[31] and $8,000,000 for each of tax years 2021 and 2022.[32]

Testimony of Gary Brandt

Gary Brandt is a licensed appraiser, holding the certified general credential,[33] and has been recognized by the Appraisal Institute with its MAI designation since 1986. He has also been recognized by the CCIM Institute with its CCIM designation since 1999.[34] He has been licensed to conduct commercial appraisals since 1981.

Brandt testified he had inspected the Subject Property on November 12, 2018, and May 6, 2021. His opinions of value were retrospective to the respective January 1 effective dates.

As noted above, Brandt completed two appraisal reports. The report for tax years 2019 and 2020 was received as Exhibit 188. The report for tax years 2021 and 2022 was received as Exhibit 187. Brandt had previously appraised the Subject Property when it was newly built in 1997 or 1998 and had also performed other appraisals of the Subject Property since that time. For each of the four tax years at issue in this appeal, Brandt testified the property was vacant during all relevant times.

Brandt utilized two methods of valuation, the Cost Approach and the Sales Comparison Approach. He testified that because of the acquisition of the property in 2017 by Bass Pro, who did not continue its use as a corporate headquarters, and because of the population of the city of Sidney at approximately 6,000, it was his opinion that the

[31] Exhibit 190:3.
[32] Exhibit 190:3 and Exhibit 191:5.
[33] Licensed by the Nebraska Real Property Appraiser Board. The scope of real property appraisal practice for the certified general real property appraiser includes all types of real property or real estate that the real property appraiser is competent to engage in.
[34] The CCIM Designation (Certified Commercial Investment Member) is a credential for commercial real estate and investment specialists. Awarded by The CCIM Institute.

property suffered from substantial obsolescence.[35] He reconciled the sales comparison approach and cost approach values each year, resulting in the opinions of value noted above.

Testimony of Andrew Baker

Andrew Baker is a licensed appraiser, holding the certified general credential for more than ten years.[36] Baker is also recognized by the Appraisal Institute with its MAI designation.

Baker testified he had inspected the Subject Property on September 2, 2021. His opinions of value were retrospective to the respective January 1 effective dates.

As noted above, Baker completed two appraisal reports. The report for tax years 2019, 2020, and 2021 was received as Exhibit 190. The report for tax year 2022 was received as Exhibit 191.

Baker considered all three valuation methods. He testified he could not complete an income approach but conducted both a cost approach and a sales comparison approach. His opinions of value gave the greatest weight to the sales comparison approach. He opined that the determination of obsolescence using the cost approach was too speculative.

Testimony of Other Witnesses

For the sake of completeness, Jordan Hayek, the County Assessor, and David Scott, the City of Sydney City Manager, both testified at the consolidated hearing. However, both of their testimony went to the issues of other appeals relating to residential parcels. The Decision and Order for those appeals has been issued separately.[37]

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[35] In his use of the cost approach, Brandt estimated obsolescence at 72.5% for tax year 2019, 72.5% for tax year 2020, 77.5% for tax year 2021, and 79% for tax year 2022. Exhibits 188:49, 188:63, 187:47, and 187:61.

[36] Licensed by the States of Kansas and Missouri.

[37] https://terc.nebraska.gov/sites/default/files/doc/19R%200032-19R%200121%2C%2020R%200021-20R%200110%2C%2021R%200274-

VI. ANALYSIS

241,272 Square Feet of Vacated Commercial Office Space (in a town of 6,500 people)

The assessment function and appraisal assignments in this case were quite difficult. What is the value of a 241,272 square foot commercial office building that at the stroke of a pen became vacated in a city with a population of 6,500? Witnesses testified to the economic impact of such a cataclysmic event. Some Cabela's employees left town. Many residents became unemployed. Under these circumstances, who would reoccupy such a large office space? Under these circumstances, who would qualify as a willing buyer? And what would they be willing to pay? The appraisal reports attempted to capture all relevant factors to determine market value.

The Appraisal Reports Constitute Competent Evidence

The appraisal reports at Exhibits 187, 188, 190, and 191were certified by each appraiser as having been made in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).[38] "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 under Nebraska law."[39] As such, both constitute competent evidence to rebut the presumption of correctness of the decisions of the County Board.

The Appraisal Reports Constitute Clear and Convincing Evidence

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21R%200363%2C%20%26%2022R%200032-22R%200121%20The%20Ranch%20at%20Sidney%2C%20LLC%20v.%20Cheyenne%20County%20Bd.%20of%20Equal.pdf.

[38] See Exhibits 187:2 and 188:2, and Exhibits 190:2 and 191:2 respectively.

[39] *Lincoln Cty. Bd. of Equalization v. W. Tabor Ranch Apartments*, LLC, 314 Neb. 582, 595, 991 N.W.2d 889 (2023) (citing JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal., 285 Neb. 120, 825 N.W.2d 447 (2013)); then citing *Cain v. Custer Cty. Bd. of Equalization*, 298 Neb. 834, 906 N.W.2d 285 (2018) (citing JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal., 285 Neb. 120, 825 N.W.2d 447 (2013)).

We find that the appraisal opinions of both appraisers for all four tax years are clear and convincing evidence that the County Board determinations were arbitrary or unreasonable. Both appraisers followed USPAP and each appraisal opinion is significantly lower than the assessed values and the determinations of the County Board.

Obsolescence Significantly Affected the Value of the Subject Property

Both appraisers acknowledged and emphasized the importance of considering obsolescence in determining the actual value of the Subject Property. Obsolescence is a cause of depreciation. One type of obsolescence is "an impairment of desirability and usefulness caused by … external factors that make a property less desirable and valuable for a continued use."[40] Obsolescence may be either functional or external.[41]

In his appraisals, Baker opined that the determination of obsolescence of the Subject Property was too speculative. Brandt had a different opinion. The Brandt appraisals stated the Subject Property "would be affected by both [functional obsolescence[42] and external obsolescence[43]] based on the size of the [Subject Property] in smaller community of rent not supporting the cost of construction and being large in size."[44]

We find that the record supports Brandt's opinion that obsolescence affected the actual value of the Subject Property. The evidence indicates that the external factors, primarily a smaller town of 6,500 experiencing the closure of the corporate headquarters of a major

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[40] *Obsolescence, The Dictionary of Real Estate Appraisal*, (7th ed. 2022).
[41] *Id*.
[42] Functional obsolescence is "[t]he impairment of functional capacity of improvements according to market tastes and standards." *Functional Obsolescence*, *The Dictionary of Real Estate Appraisal* (7th ed. 2022).
[43] "External, locational or economic obsolescence is loss in value due to causes outside the property and independent of it…" Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010). "Economic depreciation results from external economic forces which depress the value of the property." *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 647, 935 N.W.2d 764, 771 (2019).
[44] Exhibit 187:47 and Exhibit 188:49.

retailer with the size over 240,000 square feet had a significant impact on the ability to sell the property.

As noted above, Brandt calculated obsolescence at 72.5% in 2019,[45] 72.5% in 2020,[46] 77.5% in 2021,[47] and 79% for 2022.[48] Including a consideration of obsolescence created a significant difference between the Brandt and Baker appraisals. Because of the facts in the record, and because of the rationale given by Brandt in his appraisal and in his testimony, we are persuaded that obsolescence should be accounted for in a determination of the actual value of the Subject Property for each of the four tax years. For this reason, we find the Brandt appraisals are the more persuasive opinions of value.

VII. 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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's determinations were arbitrary or unreasonable.[49]

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

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Cheyenne County Board of Equalization determining the values of the Subject Property for tax years 2019, 2020, 2021, and 2022 are vacated and reversed.

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[45] Exhibit 188:49.
[46] Exhibit 188:63.
[47] Exhibit 187:47.
[48] Exhibit 187:61.
[49] 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.

2. The taxable values of the Subject Property are as follows:

    - **Tax year 2019: $6,500,000**
    - **Tax year 2020: $6,350,000**
    - **Tax year 2021: $6,200,000**
    - **Tax year 2022: $6,100,000**

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Cheyenne County Treasurer and the Cheyenne County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
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, 2020, 2021, and 2022.
7. This Decision and Order is effective for purposes of appeal on November 18, 2026.[50]

SIGNED AND SEALED: November 18, 2026.

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

[50] 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.