

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

CHEEMA INVESTMENTS  
APPELLANT,

V.

CHEYENNE COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 19C 0052

DECISION AND ORDER  
REVERSING THE DECISION  
OF THE CHEYENNE  
COUNTY BOARD OF  
EQUALIZATION

CASE NO: 20C 0071

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE CHEYENNE  
COUNTY BOARD OF  
EQUALIZATION

**For the Appellant:**  
Cheema Investments, LLC,  
Kuldip Singh, Member

**For the Appellee:**  
Amber Horn,  
Chief Deputy Cheyenne  
County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located in Cheyenne County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property for each tax year are found at Exhibits 15 and 16.

## II. PROCEDURAL HISTORY

The Cheyenne County Assessor (Assessor) determined that the assessed value of the Subject Property was \$253,200 for tax year 2019. Cheema Investments (the Taxpayer) protested this assessment to the Cheyenne County Board of Equalization (the County Board) and requested a taxable value of \$150,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$253,200.<sup>1</sup>

The Assessor determined that the assessed value of the Subject Property was \$252,700 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a taxable value of \$100,000. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$213,660.<sup>2</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 29, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-19 and 21-41 were admitted into evidence. Exhibit 20 was not admitted into evidence.

## III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>3</sup> 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

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> 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).

assessment and has acted upon sufficient competent evidence to justify its action.<sup>4</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>5</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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</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>8</sup> 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.<sup>9</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or

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

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>8</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>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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>10</sup> 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.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### 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.<sup>13</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>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> Taxable value is the percentage of actual

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<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</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>18</sup>

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.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> There

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<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Neb. Const., art. VIII, § 1.

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

<sup>21</sup> *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).

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

<sup>23</sup> *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).

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

must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

## V. FINDINGS OF FACT AND ANALYSIS

### A. Summary of the Evidence

The Subject Property is a 36,682.2 square foot commercial parcel improved with a 2,318 square foot mini-mart convenience store. The Subject Property is located south of interstate 80 at the Sidney, Nebraska exit. The Taxpayer stated that business was down at the Subject Property after the opening of a large truck stop at the same interstate exit. The Taxpayer stated that the Subject Property could not accommodate large semi-trucks. The Taxpayer closed the mini-mart convenience store on the Subject Property in December of 2019.<sup>26</sup> The Taxpayer testified regarding commercial properties located in Sidney, Nebraska.

The County Board presented the PRF for the Subject Property and the properties discussed by the Taxpayer for tax years 2019 and 2020.<sup>27</sup> The Assessor testified that the Subject Property was inspected for the 2019 assessment and at that time it was discovered that the underground fuel tanks had not been added to the PRF and they were added for the 2019 assessment. The Assessor valued the Subject Property and all other commercial properties presented using the cost approach to valuation. The Assessor stated that there were major differences in the type of improvements and construction costs between the Subject Property and many of the properties discussed by the Taxpayer. The Assessor testified that the major difference between the Subject Property and the two other mini-mart convenience store properties presented was the land valuation. The Subject Property is the only property located South of Sidney at the interstate exit while

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<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>26</sup> The Taxpayer testified that the business was closed in December of 2018, however the County's notes indicate that there was a manager spoken with on 1/14/19 indicating that business was down for the 2019 review and that the convenience store was closed at the end of 2019 for the 2020 review. See E17:4 and E18:2-3.

<sup>27</sup>

all of the other commercial properties presented were located in town. The land valuation model used for commercial interstate properties resulted in higher land values than the land valuation model for commercial properties located in town and farther from the interstate. The Assessor testified that as part of the 2020 protest of the valuation of the Subject Property it was discovered that the fuel tanks located on it were not all 15,000-gallon tanks but rather the Subject Property had one 15,000-gallon tank, one 10,000-gallon tank and one 5,000-gallon tank.<sup>28</sup> The Assessor stated that the size of the tanks was corrected as part of the County Board review of the Taxpayer's protest.<sup>29</sup>

## **B. Analysis**

The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the value of other comparable properties. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>30</sup> The PRF for the Subject Property and the other commercial properties presented shows that they are different in significant ways. The Subject Property is a mini mart convenience store while some of the properties alleged to be comparable by the Taxpayer are a fast-food restaurant,<sup>31</sup> retail stores,<sup>32</sup> corporate office,<sup>33</sup> and a grocery store.<sup>34</sup> The Commission finds that these properties would not be comparable to the Subject Property. The two properties that are also mini-mart convenience stores are located in Sidney while the Subject Property is located at the interstate exit miles from the other mini-mart convenience stores or other commercial properties discussed.<sup>35</sup> The differences in valuation between the Subject Property and the other mini-mart convenience

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<sup>28</sup> E18:7-8

<sup>29</sup> E18:3

<sup>30</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>31</sup> E21, E22

<sup>32</sup> E25, E26, E28, E29

<sup>33</sup> E27

<sup>34</sup> E32, E33

<sup>35</sup> See, E41:2

stores is due to the difference in land valuation. The Commission finds that the properties offered as comparable properties by the Taxpayer are not comparable.

A review of the 2019 PRF shows that the Subject Property was assessed for three 15,000-gallon fuel tanks<sup>36</sup> while it actually had one 15,000-gallon tank, one 10,000-gallon tank and one 5,000-gallon tank. This was the case for tax year 2020 prior to County Board action as well.<sup>37</sup> County Board action adjusting the value took the correction of the size of the fuel tanks into account.<sup>38</sup> The Commission finds that the assessed valuation of the Subject Property for the 2019 assessment should be reduced by \$28,650 to account for the correct sizes of the fuel tanks.<sup>39</sup> This correction would result in a total assessed value of \$224,550 for tax year 2019 with \$101,755 allocated to land and \$122,795 to improvements.

## VI. CONCLUSION

For tax year 2019 the Commission finds that is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. For tax year 2019 the Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. For tax year 2020 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. For tax year 2020 the

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<sup>36</sup> E15:5

<sup>37</sup> E16:3

<sup>38</sup> E18

<sup>39</sup> The PRF shows that the underground fuel tanks are valued at 3.82 per gallon and depreciated by 50%. Three 15,000-gallon tanks are valued at \$85,950 ( $15,000 \times 3.82 \times .50 = \$28,650$  per tank  $\times 3$  tanks = \$85,950). Correcting the size of the tanks to one 15,000-gallon tank, one 10,000-gallon tank and one 5,000-gallon tank would result in a value of \$57,300 ( $15,000 \times 3.82 \times .50 = \$28,650$ ,  $10,000 \times 3.82 \times .50 = \$19,100$ ,  $5,000 \times 3.82 \times .50 = \$9,550$ .  $\$28,650 + \$19,100 + \$9,550 = \$57,300$ ), which would be a reduction of \$28,650.



Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board for tax year 2019 is vacated and reversed and the determination of the County Board for tax year 2020 is affirmed.

## VII. ORDER

### IT IS ORDERED THAT:

1. The decision of the Cheyenne County Board of Equalization determining the value of the Subject Property for tax year 2019 is vacated and reversed.
2. The decision of the Cheyenne County Board of Equalization determining the value of the Subject Property for tax year 2020 is affirmed.
3. The assessed value of the Subject Property for tax year 2019 is:

<b>Land</b>	<b>\$101,755</b>
<b><u>Improvements</u></b>	<b><u>\$122,795</u></b>
<b>Total</b>	<b>\$224,550</b>

1. The assessed value of the Subject Property for tax year 2020 is:

<b>Land</b>	<b>\$101,755</b>
<b><u>Improvements</u></b>	<b><u>\$111,905</u></b>
<b>Total</b>	<b>\$213,660</b>

2. 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 (Reissue 2018)
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax years 2019 and 2020.

6. This Decision and Order is effective for purposes of appeal on February 8, 2023.<sup>40</sup>

Signed and Sealed: February 8, 2023

SEAL



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Steven A. Keetle, Commissioner

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James D. Kuhn, Commissioner

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<sup>40</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.