

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

CHEEMA INVESTMENTS
APPELLANT,

CASE NO: 19C 0055

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

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

For the Appellee:
Kent A. Hadenfeldt,
Simmons Olsen Law Firm, P.C.,
L.L.O.

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 6,968 square foot motel located in Dawes County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 11.

II. PROCEDURAL HISTORY

The Dawes County Assessor determined that the assessed value of the Subject Property was \$331,520 for tax year 2019. Cheema Investments (the Taxpayer) protested this assessment to the Dawes County Board of Equalization (the County Board) and requested a

taxable value of \$135,000. The County Board determined that the taxable value of the Subject Property for tax year 2019 was \$331,520.¹

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 28, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-14 were admitted into evidence on stipulation of the parties. Exhibits 15-17 were received into evidence over objection.

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, 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.³

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

¹ Exhibit 1.

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

to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ 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.⁸

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.⁹ 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.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

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

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

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ 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.¹²

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.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ 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.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

except as otherwise provided in or permitted by the Nebraska Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Subject Property is a 58,500 square foot parcel located on highway 20 in Chadron, Nebraska, and improved with a 6,968 square foot motel built in 1955.²⁵ The Taxpayer purchased the Subject

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *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).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

²⁵ E11.

Property for \$178,000 in September of 2018.²⁶ The Taxpayer presented information regarding other commercial properties located in the County.

Lindy Coleman, the Dawes County Assessor (Assessor) testified that she did not consider the sale of the Subject Property a good sale as it was purchased with a Deed of Trust from a Trustee.²⁷ The Assessor testified that she valued all commercial property improvements using the cost approach to value. The Assessor indicated that different types of construction would have different per square foot values depending on the features of the different properties. For example, a motel would include doors, windows and bathrooms for each guest room in the motel while a warehouse with a large open interior would have a much lower cost to construct per square foot. The Assessor also testified that she valued commercial land using the same land model for comparable locations (i.e. in Chadron, on Highway 20, off the Highway, etc.). The Assessor testified that different locations, such as Chadron or Crawford, would have different land models. Assuming the location was the same the per square foot values would be lower the larger the parcel.

Neither party in this proceeding produced the 2019 Property Record File (PRF) for the Subject Property or any of the other properties discussed. Neither party produced the information from the County Assessors web site for the 2019 assessment year. The information presented was from the 2020 or 2021 assessment year. The only information regarding the 2019 assessments the Commission has are the values as shown in the valuation history, there is no information regarding the specific assessment methodology or models used to determine the 2019 assessed values. The County Assessor testified that there was a countywide commercial reappraisal for assessment year 2020 and the information presented shows that the assessed

²⁶ E2:1-2

²⁷ See also E13:2, the 521 Real Estate Transfer Statement for the sale which indicates a \$0 purchase price and \$100,000 as the value of the property.

value for every property presented was different from tax year 2019 to tax year 2020.

B. Analysis

The Taxpayer alleges that the Subject Property should be valued at the 2018 purchase price for tax year 2019. The Taxpayer argues that the Nebraska Supreme Court has held that “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.”²⁸ The Nebraska Court of Appeals, however has held that “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”²⁹ The testimony regarding the circumstances of the purchase of the Subject Property and the differences in the sales prices and values indicated in the Real Estate Transfer Statement and Purchase Agreement do not support the determination that the sales price of the Subject Property represented market value. The Taxpayer did not offer any other sales or market information to support the determination that the sales price of the Subject Property in 2018 represented actual or fair market value.

The Taxpayer alleged that the assessed value of the Subject

²⁸ *Potts v. Board of Equalization of Hamilton County*, 213 Neb. 37, 48, 328 N.W.2d 175, 328 (1982).

²⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

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.³⁰ While we do not have the 2019 assessment information for the Subject Property, or the other properties offered by the Taxpayer regarding the specifics of their 2019 assessments, the information that was presented shows that they are different in significant ways. The Subject Property is a motel while the properties alleged to be comparable by the Taxpayer are an ATV dealership and repair shop,³¹ a mobile home dealership,³² a car dealership,³³ a big box discount store,³⁴ apartments,³⁵ and a grocery store.³⁶ The one property offered by the Taxpayer that is a motel is located in Crawford, Nebraska rather than Chadron as is the Subject Property.³⁷ The Assessor testified that Crawford and Chadron are very different markets. The Commission finds that the properties offered as comparable properties by the Taxpayer are not comparable.

The Taxpayer argued that the land components of the commercial properties should be valued at the same amount per square foot. The Assessor testified that commercial land values were determined using a model that applied the same value per square foot, but that as the size of the parcel increased the value applied for each square foot decreased. This is consistent with professional appraisal practice which holds that “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional

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

³¹ E3

³² E4 and 15

³³ E5 and 16

³⁴ E6 and 17

³⁵ E8 and E9

³⁶ E10

³⁷ E7

utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”³⁸ Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

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 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 is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawes 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:

Land	\$ 46,100
<u>Improvements</u>	<u>\$285,420</u>
Total	\$331,520

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

³⁸ Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

7. This Decision and Order is effective for purposes of appeal on January 31, 2023.³⁹

Signed and Sealed: January 31, 2023

Steven A. Keetle, Commissioner

SEAL



James D. Kuhn, Commissioner

³⁹ 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.