

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

FIRST NATIONAL BANK
OF OMAHA,
APPELLANT,

CASE NOS: 19C 0275, 20C
0224, 20C 0225, 21C 0994 &
21C 0995

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

For the Appellant:

Howard Roston,
Daniel Deveny,
Fredrikson & Byron PA

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz & James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Properties consist of two parcels located in Omaha, Douglas County, Nebraska. The Subject Properties are used by the Appellant as a Data Center (Parcel ID 1039982711) and adjacent Parking Lot (Parcel ID 1039982702). The legal description and Property Record Files (PRF) of the Subject Properties are found at Exhibits 6 and 10.

II. PROCEDURAL HISTORY

For both parcels for tax years 2019, 2020, and 2021, the Douglas County Assessor (County Assessor) determined the assessed values of the Subject Properties. First National Bank of Omaha (FNBO) protested these assessments to the Douglas County Board of Equalization (the County Board). The County Board determined the taxable values of the Subject Properties as shown below:

Subject Property	Parcel ID	Case #	Land Value	Improvement Value	County Board Value
Data Center	1039982711	19C 0275	\$2,917,800	\$14,275,800	\$17,193,600 ¹
		20C 0224	\$2,917,800	\$14,275,800	\$17,193,600 ²
		21C 0994	\$2,917,800	\$17,709,100	\$20,626,900 ³
Parking Lot	1039982702	20C 0225	\$783,900	\$0	\$783,900 ⁴
		21C 0995	\$783,900	\$0	\$783,900 ⁵

FNBO appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 13, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 through 109 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission’s review of the County Board’s determination is de novo.⁶ When the Commission considers an appeal of a decision of a

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 4.

⁴ Exhibit 3.

⁵ Exhibit 5.

⁶ 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

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.⁷

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.⁸

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.⁹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁰

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim the Subject Property is overvalued.¹¹ 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.¹²

is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁷ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁸ *Id.*

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

¹⁰ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹¹ 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).

¹² *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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.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 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

¹³ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

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).

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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 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

¹⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²⁰ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²² Neb. Const., art. VIII, § 1.

²³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁴ *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).

²⁵ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

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).

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

A. Testimony of Peter Helland

FNBO called Peter Helland to testify. Helland was a licensed real estate appraiser with over 14 years of experience and held the MAI designation from The Appraisal Institute. Helland performed two appraisals for the Subject Properties, one for tax years 2019 and 2020,²⁹ and the other for tax years 2021 and 2022.³⁰ Both appraisals were certified to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). Helland appraised the Subject Properties as a single economic unit.

Each appraisal used three approaches to valuation – a cost approach, a sales comparison approach, and an income capitalization approach. Helland then provided a reconciled opinion of value for the Subject Properties for each tax year. Each approach is discussed in further detail below.

1. Cost Approach

Helland's first step in preparing a cost approach analysis was to prepare a land and site analysis to determine the value of the underlying land component for each parcel. Helland selected several comparable land parcels with similar highest and best use for an office-type building.³¹ Adjustments were made based upon market conditions, location, and parcel size. Helland found the value of the

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

²⁹ Exhibit 16.

³⁰ Exhibit 17.

³¹ Exhibit 16:50, 17:53-54.

land component of the Subject Properties to be \$2,140,000 for tax years 2019 and 2020,³² and \$1,650,000 for tax year 2021.³³

Helland used the Marshall Valuation Service cost guide in developing his cost approach valuation. Helland's cost approach included an adjustment for a sprinkler system, HVAC, and a raised floor area. Helland selected a construction class of "B" and a quality rating of "average." Using these figures and adjustments, Helland calculated a replacement-cost-new (RCN) of \$36,285,832³⁴ and \$38,300,823 respectively.³⁵

Helland next calculated the depreciation applicable to the Subject Properties. Regarding physical deterioration, Helland found no major deferred maintenance, but based on the physical age of the building, 28%³⁶ and 31%³⁷ depreciation adjustments were applied. Helland opined the building had a functional obsolescence of 33% for all tax years and external obsolescence of 5.61%³⁸ and 4.78%.³⁹

Using these figures, Helland opined the cost approach value of the Subject Property for tax year 2019 was \$14,900,00;⁴⁰ for tax year 2020 was \$14,800,000;⁴¹ and for tax year 2021 was \$13,900,000.⁴²

2. Sales Comparison Approach

In preparing the sales comparison approach, Helland selected six comparable sales for the 2019-2020⁴³ appraisal and eight comparable sales for the 2021-2022 appraisal.⁴⁴ Adjustments were made to the prices paid for the comparable properties to account for differences in

³² Exhibit 16:52

³³ Exhibit 17:56.

³⁴ Exhibit 16:53.

³⁵ Exhibit 17:57.

³⁶ Exhibit 16:54.

³⁷ Exhibit 17:59.

³⁸ Exhibit 16:55.

³⁹ Exhibit 17:59.

⁴⁰ Exhibit 16:58.

⁴¹ *Id.*

⁴² Exhibit 17:61.

⁴³ Exhibit 16:62-63.

⁴⁴ Exhibit 17:64-66.

property rights, financing/conditions of sale, market conditions at the time of sale, location, size, age/condition, land-to-building ratio, and construction quality.⁴⁵

Based upon this analysis, Helland provided sales comparison approach value opinions for the Subject Property of \$14,900,000 for tax year 2019;⁴⁶ \$15,100,000 for tax year 2020;⁴⁷ and \$13,900,000 for tax year 2021.⁴⁸

3. Income Capitalization Approach

Helland's income capitalization approach used a market analysis to determine the typical market rent. For the 2019-2020 appraisal, Helland selected ten comparable properties in Omaha, Nebraska.⁴⁹ Nine comparables were selected for the 2021-2022 appraisal.⁵⁰ Location adjustments were applied to those comparables located outside of the downtown Omaha submarket. Additional adjustments were made for size, age, condition, and quality. Helland's analysis concluded a typical market rent rate of \$20 per square foot for tax years 2019 and 2020,⁵¹ and \$18 per square foot for tax year 2021.⁵²

Helland next calculated typical market vacancy and expense figures using data from the comparable properties as well as the historical data from the Subject Properties. Helland found a typical vacancy/expense rate of 56.9% for tax years 2019 and 2020,⁵³ and 56.7% for tax year 2021.⁵⁴

Helland then computed a capitalization rate based upon comparable sales, investor surveys, and additional analyses. A base

⁴⁵ See Exhibit 16:63, 17:66.

⁴⁶ Exhibit 16:66.

⁴⁷ *Id.*

⁴⁸ Exhibit 17:69.

⁴⁹ Exhibit 16:71-72.

⁵⁰ Exhibit 17:75-76.

⁵¹ Exhibit 16:74.

⁵² Exhibit 17:78.

⁵³ Exhibit 16:83.

⁵⁴ Exhibit 17:86.

capitalization rate of 8.5% was found for 2019 and 2020,⁵⁵ and 8% was determined for 2021.⁵⁶ The effective tax rates were added to that capitalization rate to determine loaded capitalization rates of 10.75% and 10.22% respectively.

Using these data, Helland opined income approach valuations of the Subject Properties at \$14,900,000 for 2019/2020,⁵⁷ and \$13,900,000 for 2021.⁵⁸

4. Reconciliation of Value

To reconcile the three approaches into a single opinion of value for each tax year, Helland gave primary consideration to the income approach and sales comparison approach, while using the cost approach for support.⁵⁹ Helland concluded the actual value of the Subject Properties at \$14,900,000 for 2019; \$15,000,000 for 2020; and \$13,900,000 for 2021.⁶⁰

B. Testimony of Micaela Larsen

The County Board called Micaela Larsen. Larsen was a Real Estate Specialist and licensed appraiser. She has been employed with the County Assessor for 10 years. Larsen assessed the Subject Properties in the relevant tax years.

Larsen testified the assessment of the Data Center parcel was calculated using an income approach model, which changed in 2021. Larsen testified separate models were employed for different sub-markets as well as for each condition. Each Property Record File for the Data Center parcel contained a narrative summary of the County's income approach. This narrative summary indicates data for the model is "gathered from the local market for properties of similar type."⁶¹ Larsen conceded the underlying data used to calculate the market

⁵⁵ Exhibit 16:86.

⁵⁶ Exhibit 17:90.

⁵⁷ Exhibit 16:88.

⁵⁸ Exhibit 17:90.

⁵⁹ Exhibit 16:89-90; 17:92-93.

⁶⁰ *Id.*

⁶¹ Exhibit 6:11; 8:11; 12:11.

rental rate, vacancy and collection loss rate, expense rate, and capitalization rate, were not contained within the Property Record Files. Larsen also stated that while sales data was contained within the Property Record Files, no separate sales comparison approach was used to calculate the assessment, rather the sales data was used to check the income approach figures.

For the Parking Lot parcel, Larsen testified a sales comparison approach was used to determine the value of this parcel in 2017 and the value was carried forward through 2021. Again, while sales data was included with the Property Record Files, any supporting documentation used by the County to determine the valuation was not included in the Property Record Files.

VI. ANALYSIS

“The appraisal of real estate is not an exact science.”⁶² “[A]ctual value is largely a matter of opinion and without a precise yardstick for determination with complete accuracy.”⁶³

When an independent appraiser using professionally accepted methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁶⁴ Here, the appraisal report and testimony of Helland is competent evidence sufficient to rebut the presumption the county board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. We turn then to whether the determinations by the County Board were arbitrary or unreasonable.

The Commission finds the appraisal report and testimony from Helland demonstrated persuasive evidence of actual value. The opinions of value provided in Helland’s appraisal reports were supported by facts and data contained within the report itself, as well

⁶² *In re Estate of Bock*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

⁶³ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 851, 906 N.W.2d 285, 298 (2018).

⁶⁴ *Id.*

as explanations for how those facts and data were gathered and used to reach the value opinions.

To the contrary, little evidence was adduced to demonstrate the underlying facts and data used to compute the County Board's assessments. The testimony offered by the County Board was, therefore, not persuasive. Without the availability of this underlying data, the Commission is unable to determine the reasonableness of the County Board's assessment as compared to the Helland appraisals because the Commission cannot see whether the County's figures are sufficiently supported by the data.

"It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based."⁶⁵ Based upon the record before the Commission, we determine the Helland appraisals provide clear and convincing evidence of value for the Subject Properties.

VII. CONCLUSION

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 determinations. The Commission also finds there is clear and convincing evidence the County Board's decisions were arbitrary or unreasonable.

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

⁶⁵ *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998). See *McArthur v. Papio-Missouri River NRD*, 250 Neb. 96, 547 N.W.2d 716 (1996); *Lindsay Mfg. Co. v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994).

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the taxable values of the Subject Properties for tax years 2019, 2020, and 2021 are vacated and reversed.⁶⁶
2. The taxable values of the Subject Properties for the applicable tax years are as follows:

Subject Property	Property ID	Case #	Land Value	Improvement Value	Total Value
Data Center	1039982711	19C 0275	\$1,823,380	\$12,758,159	\$14,581,539⁶⁷
		20C 0224	\$1,823,380	\$12,858,159	\$14,681,539⁶⁸
		21C 0994	\$1,402,600	\$12,252,430	\$13,655,030⁶⁹
Parking Lot	1039982702	20C 0225	\$318,461	\$0	\$318,461⁷⁰
		21C 0995	\$244,970	\$0	\$244,970⁷¹

⁶⁶ 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.

⁶⁷ As noted above, when appraising the Subject Properties as one economic unit, Helland concluded the combined actual value of the Subject Properties at \$14,900,000 for tax year 2019, \$15,000,000 for tax year 2020, and \$13,900,000 for tax year 2021. To allocate the values of the land and the value of the improvements, we first extract the values of the Parking Lot parcel and the land component of the Data Center parcel from the total.

The land component of the Data Center was calculated using the square footage found at Exhibits 16:36 and 17:56 and multiplying by the values found at 16:52 and 17:56. For tax years 2019 and 2020: 140,260 square feet (SF) x \$13/SF = \$1,823,380. For tax year 2021: 140,260 SF x \$10/SF = \$1,402,600. The values of the Parking Lot parcel were determined to be \$318,461 for tax year 2020 and \$240,970 for tax year 2021 as shown in Footnotes 70-71 below.

The remaining value is the improvement value.

2019: \$14,900,000 - \$318,461 - \$1,823,380 = \$12,758,159.

2020: \$15,000,000 - \$318,461 - \$1,823,380 = \$12,858,159.

2021: \$13,900,000 - \$244,970 - \$1,402,600 = \$12,252,430.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 24,497 SF x \$13/SF = \$318,461. Exhibit 16:36, Exhibit 16:52.

⁷¹ 24,497 SF x \$10/SF = \$244,970. Exhibit 17:56.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas 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 years 2019, 2020, and 2021.
7. This Decision and Order is effective for purposes of appeal on October 21, 2024.⁷²

Signed and Sealed: October 21, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁷² 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.