

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

MAPLE RIDGE RETIREMENT
LLC,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 19C 0363

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

For the Appellant:

Matthew Maude, Member,
Maple Ridge Retirement LLC

For the Appellee:

Jennifer Chrystal-Clark,
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz & James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with three multi-unit residential buildings used as a retirement community, located at 3525 N. 167th Circle, Omaha, Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined the assessed value of the Subject Property was \$16,059,300 for tax year 2019. Maple Ridge Retirement LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County

Board determined the taxable value of the Subject Property for tax year 2019 was \$16,059,300.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 23, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-6 were 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, 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 to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁴

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).

⁴ *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.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 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

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 except as otherwise provided in or permitted by the Nebraska

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).

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. WITNESS TESTIMONY

A. Testimony of Matthew Maude

Matthew Maude was a member and Chief Financial Officer of the Taxpayer LLC. He did not hold any appraisal licenses.

Maude testified the Subject Property was classified as an independent living facility.²⁵ Maude discussed the amenities present

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 Maude distinguished independent living from assisted living, memory care, and skilled nursing.

on the Subject Property, including live-in managers, medical alert systems, concierge services, meal serviced, housekeeping, valet parking, and a theater, to name many. As a result of these amenities to attract residents, Maude stated the net rentable space was not an accurate measure of value in that only approximately 60% of the gross square footage was rentable.

Maude offered an appraisal into evidence (JLL appraisal).²⁶ During 2019, the Taxpayer entered a financing transaction requiring an independent appraisal to be performed. The resulting value opinion from that appraisal was \$34,940,000.²⁷ Maude stated this appraisal report was meant to reach a value conclusion based upon a sale of the real property, in addition to the personal property and business goodwill. A breakdown of the components indicates a value opinion of \$1,280,000 for the land; \$28,450,000 for the improvements; \$400,000 for furniture, fixtures, and equipment (FF&E); and \$4,810,000 for intangibles and goodwill.²⁸ The Appraisal Certification asserted the Appraisal was compliant with the Uniform Standards of Professional Appraisal Practice (USPAP).²⁹ The Date of Value for the Appraisal was May 16, 2019.³⁰

The Taxpayer also submitted an opinion of value prepared by a Certified Valuation Analyst (HBE appraisal).³¹ Maude indicated this appraisal was meant to get a second opinion as to the business value of the Subject Property which could be extracted from the JLL appraisal's opinion of value, leaving as a residual the real property and personal property values. The HBE appraisal indicates a business value of \$22,360,000.³² The appraisal did not assert to be in compliance with (USPAP). The Date of Value for the Appraisal was June 30,

²⁶ Exhibit 5.

²⁷ Exhibit 5:3.

²⁸ Exhibit 5:4.

²⁹ Exhibit 5:2.

³⁰ Exhibit 5:3.

³¹ Exhibit 4.

³² Exhibit 4:2.

2019.³³Maude stated removing this amount from the \$34,940,000 from the JLL appraisal, leaves a value of \$12,580,000, which he believes to be the appropriate value for the Subject Property. Maude argues the County Board impermissibly included at least some part of the business value in their 2019 determination of taxable value.

B. Testimony of James Schulz

James Schulz was a Certified Public Account (CPA) and Certified Valuation Analyst (CVA) and had held the CVA certification since 2009. Schulz stated the CVA certification is a specialization for valuing business operations, rather than real estate.

Schulz stated he was engaged to provide an opinion of value solely for the business operation based upon the operating income and expenses, the local and regional economy, and the industry norms and standards. Ultimately, Schulz's report found an opinion of value as of June 30, 2019, for the business operations for the Subject Property to be \$22,360,000.³⁴

VI. ANALYSIS

The Taxpayer's assertion the County Board's valuation for tax year 2019 was arbitrary and unreasonable is based upon two opinions of value – the JLL appraisal and the HBE appraisal.

When an independent appraiser using professionally approved methods of mass appraisal certifies an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.³⁵ The JLL appraisal report avers it was prepared in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).³⁶ Accordingly, the receipt of the JLL appraisal into evidence is competent evidence sufficient to rebut the presumption in favor of the County Board. However, the burden still remains upon the Taxpayer to demonstrate by clear and

³³ Exhibit 5:3.

³⁴ Exhibit 4:2.

³⁵ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

³⁶ Exhibit 5:6.

convincing evidence the County Board's assessment was arbitrary or unreasonable.³⁷

Maude testified the JLL Appraisal was prepared for valuing a financing transaction, not an ad valorem taxation valuation. The JLL appraisal also provided an opinion of value for the real property, personal property, and business intangibles, with a total valuation of \$34,920,000.³⁸ The JLL appraisal indicates a land valuation of \$1,280,000 and an improvement value of \$28,450,000³⁹ for a total real estate value of \$29,730,000 – an amount significantly greater than the \$16,059,300 assessed by the County Board.

Regarding the HBE appraisal report, as Schulz testified, this report makes no opinion of value regarding the real property. Instead, only the business operations were valued. Schulz asserts this value to be \$22,360,000.⁴⁰ The JLL appraisal valued the business operations at \$4,810,000.⁴¹ Neither Schulz nor Maude provided any indication to explain the \$17,550,000 discrepancy in value of the business operations between the JLL and HBE appraisals.

A determination of actual value may be made by using professionally accepted mass appraisal methods.⁴² The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.⁴³

The Taxpayer's opinion of value was determined by using the opinion of value reached by the JLL appraisal and then subtracting the business operations value reached by Schulz. The Taxpayer's method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Further, the Taxpayer has not produced persuasive evidence the

³⁷ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845-46, 906 N.W.2d 285, 295 (2018).

³⁸ Exhibit 5:4.

³⁹ *Id.*

⁴⁰ Exhibit 4:2.

⁴¹ Exhibit 5:4.

⁴² Neb. Rev. Stat. § 77-112 (Reissue 2018).

⁴³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

business operations value reached by the JLL appraisal of \$4,810,000 was incorrect, nor does the HBE appraisal or Schulz's testimony indicate why the JLL appraisal value for the land and improvements at \$29,730,000 was incorrect. Therefore, the Commission finds the Taxpayer's asserted valuation approach does not constitute clear and convincing evidence and gives it little weight.

The Commission finds the HBE appraisal does not provide an opinion of value for the real estate components of the Subject Property and is not clear and convincing evidence the County Board's decision was arbitrary or unreasonable. Additionally, because the author of the JLL appraisal did not appear as a witness, the parties were unable to subject the facts, underlying data, and opinions of the JLL appraisal and its author to sufficient scrutiny to consider it as clear and convincing evidence. Accordingly, the Commission gives the JLL report little weight.

VII. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission also finds there is not clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be affirmed.

VIII. ORDER

IT IS ORDERED:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2019 is affirmed.

2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 884,500
<u>Improvements</u>	<u>\$ 15,174,800</u>
Total	\$ 16,059,300

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 year 2019.
7. This Decision and Order is effective for purposes of appeal on June 21, 2024.⁴⁴

Signed and Sealed: June 21, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁴⁴ 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.