

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

Cheema Investments,  
Appellant,

v.

Dawes County Board of Equalization,  
Appellee.

Case No: 19C 0055

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a motel, with a legal description of: Lot: 4 Addition: Northwest 9<sup>th</sup>.
2. The Dawes County Assessor (the Assessor) assessed the Subject Property at \$331,520 for tax year 2019.
3. Cheema Investments (the Taxpayer) protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$135,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$331,520 for tax year 2019.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 30, 2020, at Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Kuldip Singh, a member of Cheema Investments LLC, was present at the hearing.
8. Kent A. Hadenfeldt, Dawes County Attorney, and Lindy Coleman (the Assessor) were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon

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

<sup>2</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. 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 Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”<sup>3</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>4</sup>

12. 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>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Property has delayed maintenance and is being valued higher than market value. The Taxpayer provided four comparable properties to show the Subject Property is being valued in excess of its market value. The comparable properties consist of a motel, two apartment buildings and a Safeway grocery store. The Taxpayer stated, even though some of the comparable properties are not motels, they are commercial properties that are in the business of making a profit.
17. The Assessor stated the motel being offered as a comparable is in a small town located in Dawes County and would not be considered comparable to the Subject Property, which is located in Chadron, a larger town. The Assessor stated the two apartment buildings and the Safeway grocery store are not comparable to a motel.
18. The Taxpayer asserted the land value is not equalized with the comparable properties as well. The Taxpayer calculated the price per square foot of each of the comparables by dividing the lot square footage by the assessed land value. The Assessor stated the land is valued in different tiers depending on size of the lot; larger lots will have the illusion of a smaller price per square foot using the Taxpayer’s method, when in actuality, the land is being valued the same price per square foot for the first tier, then being valued at a

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<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 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 Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

smaller price per square foot for the second tier, and then is valued at an even smaller price per square foot for the third tier of excess land. This is a common valuation method with mass appraisal.

19. The Commission does not agree with the notion that all income producing commercial properties are same because they are all trying to generate income. Apartments and grocery stores are generally not considered comparable to a motel by assessors or appraisers. The one comparable that was a motel was in a much smaller community with a different valuation model and would not be considered a good comparable to the Subject Property.
20. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
21. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable 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	\$ 46,100
<u>Improvements</u>	<u>\$285,420</u>
Total	\$331,520

3. This Decision and Order, if no further action is taken, 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.
7. This Decision and Order is effective on November 4, 2020.

Signed and Sealed: November 4, 2020

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James D. Kuhn, Commissioner