

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

THE MONEY EXPRESS, INC.
APPELLANT,

V.

CHEYENNE COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 19R 0131 &
20C 0072

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

For the Appellant:

The Money Express, Inc.,
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 8 and 9.

II. PROCEDURAL HISTORY

The Cheyenne County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$658,298 for tax year 2019. The Money Express, Inc. (the Taxpayer) protested this assessment to the Cheyenne County Board of Equalization (the County Board) and requested a taxable value of \$300,000. The County Board determined

that the taxable value of the Subject Property for tax year 2019 was \$653,443.¹

The Assessor determined that the assessed value of the Subject Property was \$653,278 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a taxable value of \$300,000. The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$653,278.²

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.³ 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.⁴

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

¹ Exhibit 3.

² Exhibit 4.

³ 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).

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

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

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.¹⁰ 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

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁸ 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).

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

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

evaluation of the evidence presented to it.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

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.¹⁴ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

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.¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁵

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁹ Neb. Const., art. VIII, § 1.

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

²¹ *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).

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

²³ *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).

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

²⁵ *Id.* at 673, 94 N.W.2d at 50.

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Subject Property is a 82,168.4 square foot parcel improved with nine duplexes and a garage for multiple vehicles. Six of the duplexes are single story and three of the duplexes are two story, prior to the 2019 assessment date one of the two story duplexes was extensively damaged by fire making it un-inhabitable for tax years 2019 and 2020. The Subject Property is located on the same street as three other multi building duplex properties that were constructed two years after the Subject Property (the Taxpayer Comparables).²⁶ The Taxpayer testified regarding the similarities between the Subject Property and these properties that were valued at a lower per square foot amounts than the Subject Property.

The County Board presented the PRF for the Subject Property and the Taxpayer Comparables for tax years 2019 and 2020.²⁷ The Assessor stated that for the 2019 tax year the Subject Property was inspected to determine the state of the property after the fire. The value of the building that was damaged by fire was reduced to just the value of the slab on which the building sits for tax year 2019 and 2020. The Assessor further testified that as a result of the inspection after the fire it was discovered that the garage on the Subject Property was not being valued and that it was picked up in the 2019 and 2020 assessments. The Assessor valued the Subject Property and the Taxpayer Comparables using the cost approach to valuation. The County Assessor stated that there were differences in the size of the lots, the number of buildings on each parcel, and amenities such as porches and garages between the Subject Property and the Taxpayer Comparables that accounted for some of the differences in the per square foot valuations. The Assessor testified that the two major differences between the Subject Property and the Taxpayer Comparables were that the Subject Property had vinyl siding on wood

²⁶ E34 & E35, E36 & E37, and E38 & E39.

²⁷ E8 & E9, E34 & E35, E36 & E37, and E38 & E39.

frame exterior walls while the Taxpayer Comparables had cement fiber siding on steel frame exterior walls which were cheaper to construct, and that the Subject Property had a higher condition rating than the Taxpayer Comparables.

B. Analysis

The Taxpayer argues that the assessed value of the Subject Property was not equalized with other comparable properties. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.²⁸ The Taxpayer testified that if you were to walk down the street on which the Subject Property and the Taxpayer Comparables were located you would be hard-pressed to tell the buildings on the Subject Property from the buildings on the Taxpayer Comparables, yet their assessed values are significantly different on a per square foot basis. The Assessor argues that the Subject Property and the Taxpayer Comparables are valued uniformly and that differences in the per square foot values are due to differences in the characteristics of the properties, most significantly the exterior walls and the condition of the improvements. The Commission finds that the Taxpayer Comparables are comparable to the Subject Property as discussed below.

Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁹ 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.³⁰

A review of the PRF of the Subject Properties and the Taxpayer Comparables reveal characteristics of the properties that are relevant to the Commission's equalization analysis. The first characteristic is

²⁸ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

²⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

the exterior walls, the buildings classified as low rise multiple residential³¹ (Residential Buildings) on the Subject Property had vinyl siding on wood frame exterior walls while the Residential Buildings on the Taxpayer Comparables had cement fiber siding on steel frame exterior walls. The PRF for the Subject Property and the Taxpayer Comparables show that there is a difference in the wall cost between the Subject Property and the Taxpayer Comparables. The vinyl siding over wood frame buildings have a wall cost of between \$11.47 psf and \$11.81 psf depending on the size of the building³² and the cement fiber over steel frame building have a wall cost of between \$6.13 and \$7.69 depending on the size of the building.³³ These costs are derived from the 2015 Marshall and Swift Cost manual for the different types of construction and are consistent with the Assessor's testimony.

The Assessor testified that Residential Buildings on the Subject Property are in better condition than the Residential Buildings on the Taxpayer Comparable properties and that was the second major difference in characteristics impacting value. Condition is reflected in the amount of physical depreciation that is applied to an improvement as a part of the cost approach to value. "Physical depreciation is loss in value due to physical deterioration."³⁴ While age is a critical factor, the best approach to the physical depreciation estimate is a combination of age and condition.³⁵ The PRFs indicate that the Residential Buildings on the Subject Property were constructed in 1996 while the Residential Buildings on the Taxpayer Comparables were constructed in 1998. The PRFs further indicate that all of the Residential Buildings have the same rank, or quality rating, of 2.00 – Average and the same condition rating of 3.00 – Average.³⁶ Based on the information shown on the PRFs for the Subject Property and the PRFs of the Taxpayer Comparables, professionally accepted mass appraisal methodology

³¹ Occupancy Code 352- Multiple Res (Low Rise)

³² See, E8 & E9

³³ See, E34-E39

³⁴ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2022).

³⁵ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2022).

³⁶ See for example, E8:20 and E34:5

would suggest that the Residential Buildings on the Subject Property would have a physical depreciation that is the same as or greater than the Residential Buildings on the Taxpayer Comparables. When looking at the physical depreciation applied to the Residential Buildings on the Subject Property is 57%³⁷ in 2019 and 58%³⁸ in 2020 while the Residential Buildings on the Taxpayer Comparables have 80%³⁹, 81%,⁴⁰ and 82%⁴¹ applied in 2019 and 81%⁴² or 81.5%⁴³ applied in 2020. These significant differences in the physical depreciation factors and the much lower physical depreciation applied to the Residential Buildings on the Subject Property as compared to the Residential Buildings on the Taxpayer Comparables are not explained by anything in the record before the Commission. The Commission finds that the methodology used to determine the value for the Residential Buildings were not uniformly or proportionally applied to the Subject Property and the Taxpayer Comparables resulting in assessed values that were not equalized for tax years 2019 and 2020. Based on the record before it, the Commission finds that the equalized value of the Residential Buildings on the Subject Property can be determined by applying the highest physical depreciation amount applied to the Residential Buildings on the Taxpayer Comparables to those on the Subject Property. For tax year 2019 that physical depreciation amount would be 82%⁴⁴ and for tax year 2020 that physical depreciation amount would be 81.5%.⁴⁵ Applying these physical depreciation amounts to the

³⁷ E8

³⁸ E9

³⁹ E36

⁴⁰ E38

⁴¹ E34

⁴² E37

⁴³ E35 & E39

⁴⁴ See, E34

⁴⁵ See, E35 & E39.

Subject Property would result in equalized values of \$339,035⁴⁶ for tax year 2019 and \$346,581⁴⁷ for tax year 2020.

VI. CONCLUSION

The Commission finds that there is 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 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 vacated and reversed.

⁴⁶ Using the relevant values found on E8:3 and a physical depreciation of 82% :

Replacement Cost New	1,366,930
Phys/Fund Depreciation Loss	(1,120,883)
RCN less Phys/Func	246,047
Outbuilding Value	28,490
Total Improvement Value	274,537
Land Value	64,498
Total Appraised Value	339,035

⁴⁷ Using the relevant values found on E9:5 and a physical depreciation of 81.5%:

Replacement Cost New	1,450,110
Phys/Fund Depreciation Loss	(1,181,840)
RCN less Phys/Func	268,270
Economic Depreciation	10.000%
RCNLD	241,443
Outbuilding Value	40,640
Total Improvement Value	282,083
Land Value	64,498
Total Appraised Value	346,581

VII. ORDER

IT IS ORDERED THAT:

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

Land	\$ 64,498
<u>Improvements</u>	<u>\$274,537</u>
Total	\$339,035

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

Land	\$ 64,498
<u>Improvements</u>	<u>\$282,083</u>
Total	\$346,581

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 year 2019 and 2020.

6. This Decision and Order is effective for purposes of appeal on February 8, 2023.⁴⁸

Signed and Sealed: February 8, 2023

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

⁴⁸ 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.