

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

TIMBER SOUTH SIOUX CITY  
PROPERTIES LP,  
APPELLANT,

V.

DAKOTA COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 20C 0011

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

**For the Appellant:**

Lance D. Ehmcke,  
Heidman Law Firm

**For the Appellee:**

Kim Watson,  
Deputy Dakota 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 shopping center consisting of two buildings located in South Sioux City, Dakota County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Dakota County Assessor determined the assessed value of the Subject Property was \$2,692,665 for tax year 2020. Timber South Sioux City Properties LP (the Taxpayer) protested this assessment to the Dakota County Board of Equalization (the County Board) and requested a taxable value of \$2,183,550.<sup>1</sup> The County Board

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<sup>1</sup> Exhibit 3:1.

determined the taxable value of the Subject Property for tax year 2020 was \$2,692,665.<sup>2</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on September 15, 2021. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1-11 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>3</sup> 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.<sup>4</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>5</sup>

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order,

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<sup>2</sup> Exhibit 1.

<sup>3</sup> 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).

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

<sup>5</sup> *Id.*

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### 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,

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<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>8</sup> 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).

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

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.<sup>13</sup>

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.<sup>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> 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.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

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.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same

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<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Neb. Const., art. VIII, § 1.

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

relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

## V. FINDINGS OF FACT

### A. Summary of the Evidence

The Taxpayer's attorney offered an opening statement arguing that unusual circumstances regarding the COVID-19 pandemic affected the income producing capacity of the Subject Property. The Taxpayer did not call any witnesses.

The County Board called Darrell Stanard to testify. Stanard is a licensed appraiser and was hired by the County Board to serve as a referee for the Subject Property for tax year 2020.<sup>26</sup> Stanard stated he was not directly involved in the County Assessor's assessment of the

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<sup>21</sup> *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).

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

<sup>23</sup> *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).

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

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>26</sup> See, Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

assessed value of the parcel, but he performed the referee function once the Taxpayer had filed the protest.

Stanard stated that he physically reviewed the property and visited with tenants as to the rent and condition of the Subject Property. He testified he reviewed the evidence that had been submitted by the Taxpayer for the protest proceeding. Stanard testified he reviewed the assessment and believed the value of the land component of the assessment was equalized with similar land parcels. He also studied comparable properties and found the assessment of the Subject Property to be equalized with the comparable properties.

Stanard testified that he created the comparison summary found at Exhibit 10, which reviewed the comparables found at Exhibits 5 through 9. He admitted that Exhibit 10 does not include an analysis of rent per square foot, only assessed value per square foot. He did not find any reason to make COVID-based adjustments to commercial property in Dakota County for tax year 2020.

Stanard also created the income approach worksheet at Exhibit 11. He stated that his approach counted all of the square footage of the improvements as rentable space. In finding a market rental rate of \$9 per square foot, he testified that in his analysis, he found rental rates to vary between \$8 and \$16 per square foot and thus found \$9 to be representative of a typical market rate. Stanard found a vacancy and collection loss rate of 9% and an expense rate of 25% using typical market figures. Lastly, he selected a loaded capitalization rate of 9%, again based upon typical market figures. Stanard's calculation resulted in a valuation of \$2,779,140. However, he did not recommend the County Board raise the taxable value based upon his calculation. Ultimately, no change to the County Assessor's assessment was recommended.

## **B. Analysis**

The Taxpayer's argument fails for two reasons. First, the Taxpayer stresses that the COVID-19 pandemic affected the taxable value for tax year 2020. However, all taxable real property must be assessed as

of January 1 at 12:01 a.m.<sup>27</sup> The assessment date for tax year 2020 was January 1, 2020, at 12:01 a.m. The Taxpayer presented no evidence that any COVID-related health directives or even COVID cases were present in Dakota County, Nebraska, as of January 1, 2020.

Second, the Taxpayer's county-level protest letter<sup>28</sup> indicates that while the COVID pandemic seems to have affected the vacancy rate for the Subject Property, contributing to a downturn in income, these events happened after January 1, 2020.<sup>29</sup> As for the Taxpayer's contention that the 2019 vacancy rate was 22%, the Taxpayer provided no evidence that such a vacancy rate was typical for the market, nor did the Taxpayer provide enough facts and data to demonstrate how it came to its requested valuation.

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>30</sup> As no testimony or other supporting evidence was offered by the Taxpayer to explain and support its previously requested valuation, the Commission finds no competent evidence in the record to rebut the presumption in favor of the County Board and no clear and convincing evidence that the County Board's determination of taxable value was arbitrary or unreasonable.

## VI. CONCLUSION

The Commission finds there is no competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The

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<sup>27</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>28</sup> Exhibit 3:3-4.

<sup>29</sup> Exhibit 3.

<sup>30</sup> 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).

Commission also finds there is no clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

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

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Dakota County Board of Equalization determining the value of the Subject Property for tax year 2020 is affirmed.
2. The assessed value of the Subject Property for tax year 2020 is:

<b>Land</b>	<b>\$ 432,735</b>
<b><u>Improvements</u></b>	<b><u>\$ 2,259,930</u></b>
<b>Total</b>	<b>\$ 2,692,665</b>

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dakota County Treasurer and the Dakota 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 2020.



7. This Decision and Order is effective for purposes of appeal on June 9, 2023.<sup>31</sup>

Signed and Sealed: June 9, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>31</sup> 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.