

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

MONEY EXPRESS INC,
APPELLANT,

CASE NOS: 20C 0068 &
21C 0189

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE DAWES COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Kuldip Singh,
Money Express Inc,

For the Appellee:

Kent A. Hadenfeldt,
Simmons Olsen Law Firm, P.C.,
L.L.O.,
Special Dawes County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a parcel improved with multi-unit housing located in Dawes County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibits 7 and 11.

II. PROCEDURAL HISTORY

The Dawes County Assessor determined the assessed value of the Subject Property was \$781,910 for both tax years 2020 and 2021. Money Express Inc, (the Taxpayer) protested these assessments to the Dawes County Board of Equalization (the County Board) and

requested a taxable value of \$382,860 for each tax year. The County Board determined the taxable value of the Subject Property for tax years 2020 and 2021 was \$781,910.¹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on July 26, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-12 and 14 were admitted into evidence. Exhibits 13, 15, and 16 were not 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 in order 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

A. Rent-Restricted Housing Valuation Under Neb. Rev. Stat. § 77-1333.

Except as provided in Neb. Rev. Stat. §§ 77-1333(9) or 77-1333(10), county assessors must value low-income housing projects that meet certain criteria, using an income approach utilizing the project's *actual* income and *actual* expenses as provided each year to the Nebraska Department of Revenue.²⁵ Additionally, a capitalization rate set by the

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 Neb. Rev. Stat. § 77-1333(8) (Reissue 2018).

Rent-Restricted Housing Projects Valuation Committee shall be used in this income approach.²⁶

To qualify for the assessment method prescribed by Neb. Rev. Stat. § 77-1333, the housing project must qualify under Section 42 of the Internal Revenue Code.²⁷ A planned low-income housing development in Nebraska may apply to the Nebraska Investment Finance Authority (NIFA) for certain tax credits. These applications are handled through a competitive process, with consideration given to the percentage of units that would be rent-restricted, amenities offered to residents, etc. Upon approval of the application, a land-use restriction agreement (LURA) is created. These LURAs are recorded and are enforceable against subsequent buyers for the life of the LURA, typically 30 to 45 years. These LURAs, as their names suggest, restrict project owners from engaging in certain land uses, such as raising rents on tenants outside of a specific range, or from refusing to rent to an otherwise-qualified tenant.

If a rent-restricted housing project owner fails to timely provide the required income and expense information to the Department of Revenue, the county assessor may use any professionally accepted mass appraisal method to value the housing project.²⁸

V. FINDINGS OF FACT

A. Testimony of Roberta Coleman

Coleman has been the Dawes County Assessor since 2007. She holds the State Assessor Certificate. Coleman testified Section 42 low-income housing properties in Dawes County are valued in accordance with Neb. Rev. Stat. § 77-1333. She stated she receives income and

²⁶ *Id.*

²⁷ See generally 26 USC § 42 (2020).

²⁸ Neb. Rev. Stat. § 77-1333(9) (Reissue 2018).

expense information from the Nebraska Department of Revenue each year to assess Section 42 properties accordingly.

Coleman asserted she had contacted the Department of Revenue regarding the Subject Property for tax years 2020 and 2021 and was informed the Subject Property was no longer subject to a land use restriction agreement (LURA) and therefore not subject to Section 42 low-income housing rent restrictions. Coleman further stated the manager of the Subject Property informed the reappraisal team the Subject Property was no longer rent restricted.

Coleman also noted she was told by the Department of Revenue no income and expense information was submitted to the Department for the Subject Property for use in tax years 2020 and 2021. This information was required for Section 42 properties seeking assessment under the Neb. Rev. Stat. § 77-1333 income approach appraisal methodology.²⁹

Coleman testified the Subject Property was valued using the cost approach for tax years 2020 and 2021.³⁰

B. Testimony of Kuldip Singh

Kuldip Singh is the President of Money Express Inc. Singh stated he purchased the Subject Property with the understanding the LURA restrictions had passed, and he was free to rent the Subject Property as he wished. Singh then stated he received a letter from the Nebraska Investment Finance Authority (NIFA) informing him the LURA restrictions were in effect for 45 years from the date of recording. Singh admitted he did not recall seeing the LURA documents, but someone from NIFA discussed the LURA terms with him. Singh asserted due to the existence of the LURA the Subject Property should

²⁹ Neb. Rev. Stat. § 77-1333(5) (Reissue 2018).

³⁰ See Exhibits 6 and 11.

be valued using the Neb. Rev. Stat. § 77-1333 methodology for Section 42 rent-restricted low-income housing projects.

Singh testified he was not informed until 2021 of the requirements to file his income and expense figures with the Department of Revenue to have the Subject Property valued using those figures.³¹ Singh admitted he did not file income and expense information in tax year 2020 because he was not aware of the LURA restrictions at that time.

C. Testimony of Darrel Stanard

Darrel Stanard has been a licensed appraiser for over 37 years and also holds the State Assessor Certificate. Stanard testified he was directly involved in the assessment of the Subject Property for tax years 2020 and 2021. Stanard was retained by the County Assessor to conduct reappraisals on commercial properties in Dawes County for 2020. He was also hired by the County Board to perform referee³² and coordinator work during the protest process³³ as well as to testify in these appeal proceedings.³⁴

Stanard testified he remeasured the buildings to ensure the square footage was correct. He also spoke with the manager to verify the rents charged and occupancy rates. Once the information was compiled, Stanard considered three approaches to value; the cost approach, the

³¹ See Neb. Rev. Stat. § 77-1333 (Reissue 2018).

³² See Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

³³ To be a referee in this context means to be “an impartial credentialed appraiser or county assessor or deputy county assessor certificate holder who conducts protest hearings as the representative of, and under the direction of, the county board of equalization.” 350 NAC Ch. 50, § 001.24 (7/5/2017). It is unclear to us how an appraiser that reappraises a particular property for a county assessor can then maintain impartiality when functioning as the referee for the same property and for the same tax year when under contract with the county board.

³⁴ Stanard is a licensed residential appraiser, credentialed to appraise residential property. See, Neb. Rev. Stat. § 76-2213. He is not a certified general appraiser, who would be credentialed to appraise commercial property. See, Neb. Rev. Stat. § 76-2207.20. A licensed residential appraiser doing assessment work for a County Assessor is exempted from the requirements of the Real Property Appraiser Act. Neb. Rev. Stat. § 76-2221(9). However, a licensed residential appraiser working for a County Board may be in violation of the Real Property Appraiser Act if an opinion of value is given outside the scope of the appraiser’s credentials. Neb. Rev. Stat. § 76-2201, et seq. In this case, it appears Stanard, when contracted by the County Board, was not credentialed to give an opinion of value of the Subject Property, which was a commercial property.

sales comparison approach, and the income capitalization approach. Once the approaches were considered, they were reconciled into a final opinion of value. Stanard stated these figures were provided to the county assessor and entered into the county's computer assisted mass appraisal (CAMA) system along with subjective recommendations regarding quality and condition ratings and depreciation.

Stanard noted he received information the Subject Property may have been subject to a Section 42 LURA. However, when he asked the county assessor for the income and expense information required to be provided to the county by the Department of Revenue, the county assessor stated she had not received any information from the Department. Stanard stated he felt the cost approach result of \$781,910 accurately reflected the market value of the Subject Property for both tax years and was equalized with similar properties in Dawes County.

VI. ANALYSIS

Neb. Rev. Stat. § 77-1333(5) requires an owner to file with the Department of Revenue actual income and actual expense data for the prior tax year on or before July 1 of each year. The Department of Revenue, in turn, shall forward that data to the relevant county assessors on or before August 15 of each year, for use in assessments the following tax year.

Singh testified he did not file income and expense data until 2021. As such, the data filed by Singh in 2021 would have been the actual income and actual expenses for 2020, which would have been forwarded to the Dawes County Assessor for use for the 2022 tax year. It is undisputed there was no actual income and actual expense data in evidence for the 2020 and 2021 tax years.

Section 77-1333(9) states if the data required by section 77-1333(5) is not timely filed, a county assessor "may use any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112." As the Taxpayer did not file the data

required by section 77-1333(5), the Dawes County Assessor was free to use another professionally accepted mass appraisal method to value the Subject Property.

Neb. Rev. Stat. § 77-112 specifically lists the cost approach as a professionally accepted mass appraisal method. The Commission finds it was reasonable for the Dawes County Assessor to use this method to value the Subject Property for tax years 2020 and 2021.

The Taxpayer has not provided any evidence of an alternative value sufficient to rebut the County Board's presumption that it had sufficient competent evidence to make its determination. Further, the Taxpayer has not presented clear and convincing evidence to demonstrate the County Assessor's use of the cost approach, or the data used to calculate the 2020 and 2021 assessments of the Subject Property was incorrect or otherwise arbitrary or unreasonable.

VII. CONCLUSION

The Commission finds there is not 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 not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board are affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dawes County Board of Equalization determining the value of the Subject Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 and 2021 are:

Land	\$ 58,020
<u>Improvements</u>	<u>\$ 723,890</u>
Total	\$ 781,910

3. This Decision and Order, if no appeal is timely filed, 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 years 2020 and 2021.
7. This Decision and Order is effective for purposes of appeal on November 28, 2023.³⁵

Signed and Sealed: November 28, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁵ 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.