

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

CHEEMA INVESTMENTS
LLC,
APPELLANT,

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NOS: 20C 0069, 20C
0070, 21C 0188 & 21C 0190

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

For the Appellant:
Kuldip Singh,
Cheema Investments LLC,

For the Appellee:
Kent A. Hadenfeldt,
Simmons Olsen Law Firm, P.C.,
L.L.O.

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

I. THE SUBJECT PROPERTIES

The Subject Property in Case Nos. 20C 0069 & 21C 0190 was a 45-room, 23,052 square foot hotel and conference center operating as Chadron Inn & Suites. The Subject Property in Case Nos. 20C 0070 & 21C 0188 was a 20-room, 68,484 square foot hotel and conference center operating as the Motel Grand. Both parcels were in Dawes County, Nebraska. The legal descriptions and Property Record Files (PRF) of the Subject Properties are found at Exhibit 7 (Chadron Inn & Suites) and Exhibit 11 (Motel Grand).

II. PROCEDURAL HISTORY

A. Chadron Inn & Suites

The Dawes County Assessor (the County Assessor) determined the assessed value of the Motel Grand property was \$1,829,920 for tax years 2020 and 2021. Cheema Investments LLC (the Taxpayer) protested these assessments to the Dawes County Board of Equalization (the County Board) and requested a taxable value of \$544,056 for tax year 2020 and \$669,050 for tax year 2021. The County Board determined the taxable value of the Motel Grand property for both tax years 2020 and 2021 was \$1,829,920.¹

B. Motel Grand

The County Assessor determined the assessed value of the Motel Grand property was \$368,335 for both tax years 2020 and 2021. Cheema Investments LLC (the Taxpayer) protested these assessments to the County Board and requested a taxable value of \$135,000 for both tax years. The County Board determined the taxable value of the Motel Grand property for both tax years 2020 and 2021 was \$368,335.²

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 1-22 and 25-50 were admitted into evidence. Exhibits 23 and 24 were not admitted into evidence.

¹ Exhibits 1 and 4.

² Exhibits 2 and 3.

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 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 to successfully claim that the Subject Property is

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).

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).

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 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

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).

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

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

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 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

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).

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).

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

V. FINDINGS OF FACT

A. Testimony Regarding Chadron Inn & Suites

1. Testimony of Kuldip Singh

Kuldip Singh was a member of Cheema Investments, LLC, the Appellant. He stated the Chadron Inn & Suites was purchased in February 2019 for \$1,000,000²⁶ following a foreclosure sale. This sum included both real and personal property.

Singh asserted the COVID-19 pandemic negatively impacted the income from the property, while most expenses remained constant, resulting in a negative cash flow for two years. Singh testified the property brought in a revenue of \$211,721 for 2020,²⁷ and \$261,478 for 2021. Singh argued the income approach would be a better indicator of actual value.

2. Testimony of Roberta “Lindy” Coleman

Lindy Coleman had been the Dawes County Assessor since 2007 and held the State Assessor’s Certificate. Coleman testified she hired

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.

²⁶ Exhibit 7:6.

²⁷ Exhibit 27.

Stanard Appraisal Services to conduct commercial reappraisals for tax year 2020, which included the reassessment of both Subject Properties.

Coleman testified the cost approach was used to value all commercial properties in the county, including the Subject Properties. She stated characteristics such as build quality, condition, and square footage were entered into the county's computer-assisted mass appraisal (CAMA) system to determine the assessed values. Coleman testified the condition of the entire property was considered when assigning the condition rating.²⁸

When asked to explain handwritten entries on the Property Record File (PRF) of the property adjusting the physical and functional depreciation figures and replacement cost new less depreciation amounts,²⁹ Coleman stated these entries were made by Josh Garris, an employee of Stanard Appraisal, and she could not explain the basis for these adjustments. Coleman stated, in her opinion, the assessed values of the property reflected actual value for tax years 2020 and 2021.

3. Testimony of Brad Helgerson

Brad Helgerson had been a Certified Public Accountant for 27 years. Helgerson testified the Appellant's profit and loss statement for 2020³⁰ did not accurately reflect the total expenses incurred, which should be \$237,152, resulting in a loss of \$25,431 for that year.

4. Testimony of Darrel Stanard

Darrel Stanard had been a licensed real estate appraiser for over 30 years. Stanard Appraisal had a contract with the County Assessor to perform reappraisals of commercial real property in Dawes County for tax year 2020. Stanard and his company were also hired by the County Board³¹ as referees and referee coordinators for the county protest

²⁸ See Exhibit 7:3.

²⁹ Exhibits 7:4, 7:6, and 7:8.

³⁰ Exhibit 27.

³¹ See Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

process.³² Stanard stated he was involved in the referee work for the property. Stanard was also subsequently retained by the County Board to testify before the Commission in support of the County Board's determination of value.³³

Stanard testified he inspected the property approximately four or five times prior to Cheema Investments' ownership. Stanard confirmed his employee, Josh Garris, had inspected the property. Stanard testified the usual practice for his company is to have all field notes reviewed by another employee who is a licensed appraiser. Stanard stated he had reviewed the field notes created by Garris during the inspection.

In reviewing the property, Stanard testified three approaches to value were considered – the cost approach, the sales comparison approach, and the income capitalization approach.

Stanard stated his appraisal firm was asked to verify on-site property characteristics to determine whether to disqualify a particular sale. The verification worksheet for the property is found at Exhibit 8. Stanard testified the 2019 sale of the property was disqualified from the sales file due to that sale being a foreclosure sale. Stanard stated he considered the verification and reappraisal in his

³² 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 appraisal company 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.

³³ 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.

determination of the assessed value. Stanard also stated his opinion of value for the property was \$1,829,920.

When asked to explain the income approach performed by his appraisal firm, Stanard stated his appraisers gathered information from owners and managers as to room rates and occupancy rates, but if information is incomplete or cannot be obtained from a property owner, Stanard looks to what is typical in the same market to supply the missing data. Stanard testified the income approach valuation for the property used a potential gross income amount of \$1,098,650, based upon 43 rentable rooms at \$70 per rental. He also applied a vacancy and collection loss rate of 40%, a 75% expense rate, and a 9% loaded capitalization rate.³⁴ These figures resulted in an income approach valuation of \$1,831,083.³⁵

For the sales comparison approach, Stanard testified a \$75 per square foot value was used, resulting in a valuation of \$1,857,450.³⁶ When asked what properties were used as comparables to determine those determinations of value, Stanard stated no other properties in Dawes County were suitable comparables. Instead, he stated other sales needed to be used as the Appellant's purchases of similar properties needed to be disqualified as those sales were also generally foreclosure sales. When asked what the basis was for assigning a \$75 per square foot amount for his sales comparison approach, Stanard admitted that number was "backed-in" based upon the results of the cost and income approach calculations with the purpose to generate a value similar to those approaches.

Regarding the handwritten notes made by Garris which altered the depreciation figures on Exhibit 7:8, Stanard testified the handwritten figures would have been made based upon Garris's inspection of the property and his belief as to what those figures should be. Stanard

³⁴ A loaded capitalization rate includes the effective tax rate.

³⁵ Exhibit 7:4.

³⁶ Exhibit 7:4-5.

admitted the 42% physical depreciation figure appeared “a little high” based upon the effective age³⁷ of the property.

When asked whether any adjustments were made regarding expenses, vacancy rates, capitalization, or depreciation due to the COVID-19 pandemic beginning in March 2020 which could be applied to the tax year 2021 value, Stanard stated he would not have taken any COVID effects into consideration.

B. Testimony Regarding Motel Grand

1. Testimony of Kuldip Singh

Kuldip Singh testified the Motel Grand property was also purchased in connection with a foreclosure sale. Singh asserted this property also should have been valued using the income approach.

Singh stated his opinion that a typical market rent for properties like the Motel Grand as of January 1, 2020, would be \$190 per week. Singh also opined the vacancy rate for the property would have been 75%, as well as a 75% expense rate, and a 11% loaded capitalization rate.

2. Testimony of Roberta “Lindy” Coleman

Lindy Coleman testified her answers given in prior testimony regarding the Chadron Inn & Suites, to the extent that testimony would also apply to the Motel Grand, would be substantially the same.

3. Testimony of Darrel Stanard

Darrel Stanard testified his answers given in prior testimony regarding the Chadron Inn & Suites, to the extent that testimony would also apply to the Motel Grand, would be substantially the same.

Stanard confirmed a similar reappraisal process was used to reassess the Motel Grand as was done for the Chadron Inn & Suites,

³⁷ Effective age is “[t]he age of property that is based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age.” *Effective Age*, The Dictionary of Real Estate Appraisal (7th ed. 2022).

including “backing in” a per square foot value to arrive at the sales comparison approach value found at Exhibit 11:4.

VI. ANALYSIS

A. Presumption in Favor of the County Board’s Decisions Have Been Overcome.

As noted above, the County Board enjoys a presumption that it faithfully executed its official duties to make an assessment and acted upon sufficient competent evidence. This presumption remains until an appellant adduces competent evidence to the contrary.³⁸ “Competent evidence is evidence that is admissible and tends to establish a fact in issue.”³⁹ Competent evidence may also be “evidence tending to show that the valuation” adopted by a county board of equalization may be questionable.⁴⁰

Here, Singh provided evidence and testimony regarding the actual profit and loss figures for both properties in tax year 2020. Evidence was also adduced during the hearing which calls into question the validity of the assessment methodology relied upon by the County

³⁸ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644-45, 935 N.W.2d 764, 769-70 (2019) (citing *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 941-42, 911 N.W.2d 551, 558 (2018)).

³⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 297-98 (2018).

⁴⁰ *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 942-43, 911 N.W.2d 551, 558-59 (2018).

Board. The Commission finds the presumption of validity of the Decisions of the County Board to be rebutted.

B. The Sales Comparison Approach

As the County Board's presumption has been overcome, the reasonableness of the valuation becomes a question of fact based upon the evidence presented.⁴¹

The Commission is deeply concerned regarding Stanard's testimony as to the sales comparison approaches used in valuing these properties. An opinion of value based on use of the sales comparison approach requires use of a systematic procedure:

1. Research the competitive market for information on properties that are similar to the [subject] property . . . and that have recently sold, or were listed for sale, or were under contract. . . . The characteristics of the properties such as property type, date of sale, size, physical condition, location, and land use constraints should be considered. The goal is to find a set of comparable sales or other evidence such as property listings or contracts as similar as possible to the subject property to ensure they reflect the actions of similar buyers. . . .
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length market considerations. . . .
3. Select the most relevant units of comparison used by participants in the market (e.g., price per acre, price per square foot, price per front foot, price per dwelling unit, price per lot or proposed lot, price per room) and develop a comparative analysis for each unit. The goal is to define and identify a unit of comparison that explains or mirrors market behavior.
4. Look for differences between the comparables being considered and the subject property using all appropriate elements of comparison. Then adjust the price of each

⁴¹ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644-45, 935 N.W.2d 764, 769-70 (2019) (citing *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 941-42, 911 N.W.2d 551, 558 (2018)).

comparable, reflecting how it differs to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar properties and then adjusting for any remaining differences. . . .

5. Reconcile the various value indicators produced from the analysis of comparables into a value indication⁴²

Stanard's testimony of "backing in" a per square foot value to meet a predetermined result is not consistent with professionally accepted appraisal practices. Furthermore, Stanard stated there were no qualified recent sales in Dawes County, and therefore sales from outside the county would need to be considered. No evidence of any sales consideration is found in the record.

Effectively, the sales comparison approach used by the County Assessor subjectively inserted a price per square foot when there were no sales indicating that per square foot value. The per square foot value that was inserted into the approach was subjectively calculated in order to reach a predetermined result. This is unacceptable. Nebraska law does not require an assessor to consider a cost approach, a sales comparison approach, and an income approach for the assessment of every parcel. Given that, the Commission cannot fathom why Stanard and the County Assessor felt it necessary to fabricate a sales comparison approach if there were not enough qualified sales of comparable properties in the county.

Stanard testified these "backed-in" results were considered in the final value assigned to each property, even though a cost approach carried the most weight according to Stanard and Coleman. Accordingly, the Commission affords no weight to the sales comparison approaches used to value each Subject Property.

C. The Income Capitalization Approach

When asked to substantiate the vacancy and expense rates used in developing the income approach valuation, Stanard alleges all

⁴² Appraisal Institute, *The Appraisal of Real Estate* 355 (15th ed. 2020).

comparable hotel properties were used to develop the rates, but he “didn’t document anything of that nature.” “Successful application of the income approach requires the collection, maintenance, and careful analysis of income and expense data.”⁴³

Stanard stated the rental rates used to calculate the potential gross income may have been based upon the actual room rates of the Subject Properties. “Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties).”⁴⁴ It is unclear from the record whether these rates reflect typical figures for the market. Based upon these issues, as well as testimony of Stanard and Coleman that the income approach was not relied upon, the Commission affords no weight to the income approach calculations used to value each Subject Property.

D. The Cost Approach

Coleman testified the cost approach was used to assess both Subject Properties. The cost approach includes six steps:

- (1) Estimate the land (site) value as if vacant and available for development to its highest and best use;
- (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis;
- (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence;
- (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements;
- (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements;
- (6) Add site value to the depreciated cost of the primary improvements, accessory

⁴³ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

⁴⁴ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

improvements, and site improvements, to arrive at a value indication by the cost approach.⁴⁵

There is no reasonable dispute regarding the square footage of either Subject Property. Rather, the edits made to the PRFs for both properties involve adjustments to the physical and functional depreciation assigned to the properties.⁴⁶ “Depreciation is loss in value due to any cause. It is the difference between the market value of a structural improvement or piece of equipment and its reproduction or replacement cost as of the date of valuation. Depreciation is divided into three general categories, physical, functional, and external.”⁴⁷

The 2020 protest materials in the record note renovations performed on both Subject Properties as a basis for increased valuations.⁴⁸ “Physical depreciation is loss in value due to physical deterioration.”⁴⁹ Regarding the Chadron Inn & Suites, contrary to Stanard and Coleman’s assertions of renovations, the assigned physical depreciation value actually *increased*, from 27% to 42%.⁵⁰ Stanard testified he thought that figure to be higher than expected given the effective age of the Chadron Inn & Suites.

E. Valuation of the Subject Property

The Nebraska Supreme Court recently held that the Commission has “the power and duty to determine on appeal whether the income approach would result in actual value and to substitute whatever method [the Commission] deems suitable to determine actual value.”⁵¹

As Stanard’s testimony indicated, the sales comparison approaches were “backed-in” figures. These figures were used in an attempt to

⁴⁵ International Association of Assessing Officers, *Property Assessment Valuation* 230 (3rd ed. 2010); see Appraisal Institute, *The Appraisal of Real Estate* 532-33 (15th ed. 2020).

⁴⁶ Exhibits 7:8, 11:7.

⁴⁷ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

⁴⁸ Exhibits 36:1, 40:1.

⁴⁹ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

⁵⁰ Compare Exhibits 7:8 and 7:3.

⁵¹ *Lincoln Cty. Bd. of Equal. v. Western Tabor Ranch Apts.*, 314 Neb. 582, 595, 991 N.W.2d 889, 899 (2023).

reconcile the assessed values for both Subject Properties. Further, neither Coleman nor Stanard could testify as to basis for the depreciation adjustments made by Stanard's employee, Garris. Garris was not called by either party to provide testimony regarding the notes made in Exhibits 7 or 11. Stanard stated he believed the assigned depreciation was "a little high" given the age of the Subject Properties.

No evidence has been adduced to demonstrate the assessment performed on the Subject Properties met a professionally accepted mass appraisal method. Accordingly, the Commission finds the 2020 and 2021 assessments to be arbitrary and unreasonable based upon the unreliability of the reappraisal performed by Stanard and accepted by Coleman and the County Board.

The Commission has a duty to determine actual value of property on appeal.⁵² The Taxpayer has not presented sufficient evidence of actual value, only offering the actual income and expense reports for the Subject Properties. The reappraisal conducted by Stanard and affirmed by the County Board also fails to provide sufficient evidence of actual value. However, two PRFs have been entered into evidence for the Chadron Inn & Suites. One PRF is dated April 5, 2019, showing a total appraised value of \$1,269,170.⁵³ This figure represents the assessed value of the Chadron Inn & Suites for tax year 2019.

The second PRF is dated September 20, 2019, showing a cost approach calculation using the July 2019 Marshall & Swift costing tables. This cost approach resulted in a total appraised value of \$1,042,550 for the Chadron Inn & Suites.⁵⁴ This figure was calculated prior to the unsubstantiated adjustments made by Garris, Stanard, and Coleman. The Commission finds this value to be the best evidence of actual value for the Chadron Property for tax years 2020 and 2021.

The record also contains a PRF for the Motel Grand property printed on September 26, 2019, also using the July 2019 Marshall & Swift costing tables for a cost approach calculation. This calculation

⁵² See Note 49, *supra*.

⁵³ Exhibit 8:2.

⁵⁴ Exhibit 7:6.

resulted in a total appraised value of \$218,900.⁵⁵ As above, the Commission finds this value, calculated prior to the unsubstantiated adjustments, to be the best evidence of actual value for the Motel Grand property for tax years 2020 and 2021.

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 determinations. The Commission also finds there is clear and convincing evidence the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Dawes County Board of Equalization determining the values of the Subject Properties for tax years 2020 and 2021 are vacated and reversed.
2. The taxable value of the Motel Grand Property for tax year 2020 is:

Land	\$ 74,250
<u>Improvements</u>	<u>\$ 144,650</u>
Total	\$ 218,900

3. The taxable value of the Motel Grand Property for tax year 2021 is:

Land	\$ 74,250
<u>Improvements</u>	<u>\$ 144,650</u>
Total	\$ 218,900

4. The taxable value of the Chadron Inn & Suites Property for tax

⁵⁵ Exhibit 11:5.

year 2020 is:

Land	\$ 74,185
<u>Improvements</u>	<u>\$ 968,365</u>
Total	\$ 1,042,550

5. The taxable value of the Chadron Inn & Suites Property for tax year 2021 is:

Land	\$ 74,185
<u>Improvements</u>	<u>\$ 968,365</u>
Total	\$ 1,042,550

6. 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).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2020 and 2021.
10. This Decision and Order is effective for purposes of appeal on November 28, 2023.⁵⁶

Signed and Sealed: November 28, 2023

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁵⁶ 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.