

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Cheema Investments LLC,
Appellant,

v.

Box Butte County Board of Equalization,
Appellee.

Case No: 20C 0073

**DECISION AND ORDER
AFFIRMING THE DECISION OF THE
BOX BUTTE COUNTY BOARD OF
EQUALIZATION**

Background

1. The Subject Property is an improved commercial parcel with a legal description of Lot 2 BLK 3 Homestead Add.
2. The Box Butte County Assessor assessed the Subject Property at \$468,000 for tax year 2020.
3. Cheema Investments LLC (the Taxpayer) protested this value to the Box Butte County Board of Equalization (the County Board) and requested an assessed value of \$212,896 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$468,000 for tax year 2020.
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 September 20, 2021, at Hampton Inn & Suites, 301 US-26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Kuldip Singh was present at the hearing for the Taxpayer.
8. Michelle Robinson (the Assessor) and Terry Curtiss (County Attorney) 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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

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

² 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.”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

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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer stated the land values of the Subject Property are not equal with similar properties. The Taxpayer provided comparables with land values that are much lower price per square foot than the Subject Property. The Assessor stated the Subject Property is a commercial property and the comparable properties provided by the Taxpayer are vacant residential properties. The Assessor stated the residential land value models are not the same as commercial land value models. The Taxpayer stated his apartment complex has people living in them and are therefore residential.
17. The Taxpayer’s first two comparables are undeveloped land. Taxpayer’s Comp 3 is an apartment building larger than the building on the Subject Property. Although a website printout provided by the Taxpayer indicates that Comp 3 is residential, the property record file (PRF) for the Comp 3, also provided by the Taxpayer, shows that the property is being assessed as commercial. Furthermore, the information presented shows that the lots of both the Subject Property and Comp 3 are assessed at \$0.75 per square foot.
18. The Taxpayer stated the Subject Property’s improvement value is higher than the comparables provided by the county. The Taxpayer stated the price per square foot on the

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

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. 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 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

property record file (PRF) shows the Subject Property is being valued higher than comparable properties.

19. The Assessor stated the apartment complexes are being valued using the income approach and not on a price per square foot. The income approach data used to value the apartment complexes is collected by the Assessor's office. The Assessor stated the market data is used to value all apartment complexes unless a taxpayer provides data that shows an extreme difference between what is typical in the market and the actual income and expenses.
20. The Assessor stated the Taxpayer did not provide any income and expense data for the Subject Property.
21. 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.
22. 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.

ORDER

IT IS ORDERED THAT:

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

Land	\$ 40,936
<u>Improvements</u>	<u>\$427,064</u>
Total	\$468,000

3. This Decision and Order, if no further action is taken, shall be certified to the Box Butte County Treasurer and the Box Butte 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 on February 7, 2022.

Signed and Sealed: February 7, 2022

James D. Kuhn, Commissioner