

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

BUSINESS PROPERTIES OF
CHADRON LLC
APPELLANT,

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NO: 20C 0078

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

For the Appellant:

Karl Storjohann, Member,
Business Properties of Chadron
LLC

For the Appellee:

Kent A. Hadenfeldt
Simmons Olsen Law Firm, P.C.,
L.L.O.

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a 13.84-acre parcel located in Dawes County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Dawes County Assessor determined that the assessed value of the Subject Property was \$148,625 for tax year 2020. Business Properties of Chadron LLC, Karl Storjohann, Member (the Taxpayer) protested this assessment to the Dawes County Board of Equalization (the County Board) and requested a taxable value of \$103,375. The

County Board determined that the taxable value of the Subject Property for tax year 2020 was \$148,625.¹

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 28, 2021. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-12 were 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

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).

except as otherwise provided in or permitted by the Nebraska 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

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Subject Property is a 13.84 acre parcel situated north of highway 20 and south of railroad tracks and adjacent to the east side of the City of Chadron.²⁵ The Subject Property is not within the corporate city limits of the City of Chadron, but the parties agree it is

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 E10:3

subject to the zoning authority of the City.²⁶ The Subject Property is improved with a two bay warehouse located in the southeast corner of the property and a carport or loafing shed located on the southwestern edge of the property.²⁷ There is a well on the northeast corner of the property that serves the warehouse, which has a bathroom with a stool and sink, as well as the adjacent property to the northwest.²⁸ The Subject Property does not have a connection to city water or sanitary sewer and it would cost approximately \$41,800 and \$192,800 respectively to connect the Subject Property to these services.²⁹

The Taxpayer testified that he trenched the water line from the well on the Subject Property to the adjacent property to the northwest himself. When digging this trench the Taxpayer discovered old steel, cans, and women's nylons along with broken down material which he believes are the remnants of a dump site on the Subject Property in the 1920's, 30's, or 40's. The Taxpayer believes that the dump site encompasses around 5 acres of the Subject Property and is now covered by approximately 2 feet of good soil.³⁰ The Taxpayer testified that the portions of the Subject Property that are not associated with the warehouse or shed are used for the growing of grass that he hays several times a year. The Taxpayer testified that by maintaining the hayed acres in this manner reduces the weeds on the Subject Property and therefore results in a better appearance.

Lindy Coleman, the Dawes County Assessor (Assessor) testified that the Subject Property was reappraised for tax year 2020 as part of a commercial re-appraisal for the County. The assessed value of the improvements on the Subject Property were valued using the cost approach to valuation. The assessed value of the land component of the Subject Property was increased for tax year 2020 due to recent sales of rural or suburban commercial properties. The Assessor testified that the Subject Property is classified as a commercial or industrial

²⁶ E10:2

²⁷ E10:3 and E5.

²⁸ See, E11:2

²⁹ E10:2

³⁰ See, E11:2

suburban or rural property and was valued as all other properties classified in the same manner.³¹ The Assessor testified that the values in the assessment model for properties classified as a commercial or industrial suburban or rural were only based on sales of properties located outside of city limits. The Assessor testified that she could find no record of the Subject Property ever being used as a dump by the City of Chadron.

B. Analysis

The Taxpayer did not challenge the valuation of the improvements located on the Subject Property, just the value of the land component and therefore the Commission will only discuss the valuation of the land.

The Taxpayer alleged that the Subject Property should be classified and valued as agricultural or horticultural property. While the parties agree that the Subject Property is within the zoning authority of the City of Chadron there is no evidence of how the Subject Property is actually zoned. The presence of a distribution warehouse located on the edge of the property farthest from the city indicates that it is most likely zoned for commercial uses. Considering the location of the warehouse and the well on the property together with the portion of the Subject Property that the Taxpayer maintains for haying, the Commission finds that the primary use of the parcel as a whole is for commercial use. Additionally, there is no evidence in the record before the Commission to show what the value of the Subject Property would be for agricultural or horticultural uses. Without this information the Commission could not determine a value of the Subject Property, or any portion thereof, as agricultural or horticultural land.

The Taxpayer further alleges that the presence of the acres previously used as a dump as well as the location and lack of city water

³¹ See, E4. The Commission notes that the assessed value of the land component of the Subject Property using this Lot Values Report should result in a higher valuation but the County Board did not provide notice of a higher taxable value and intent to offer proof in its support as required by Title 442 Neb. Admin. Code ch 5 §016.02A (6/21), and therefore the Commission will not consider an assessed value higher than \$148,625.

and sewer should reduce the value of the Subject Property. The Taxpayer did not present any information to establish the extent of the use of the Subject Property as a dump or any other information to allow the Commission to quantify the impact of these acres on the value of the Subject Property. Similarly, there is no evidence before the Commission to support the Taxpayer's allegation that the properties with city water or sewer or properties on the west side of the City of Chadron have a higher value than properties without city water and sewer or on the east side of the City of Chadron. The Taxpayer did not present information regarding sales of real property in Dawes County. The Assessor testified that only sales of commercial property located outside of city limits were used to determine the land value applied to the Subject Property.

VI. CONCLUSION

The Commission finds that 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 determination. The Commission also finds that there is not 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 affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawes 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:

| | |
|----------------------------|-------------------------|
| Land | \$ 63,335 |
| <u>Improvements</u> | <u>\$ 85,290</u> |
| Total | \$148,625 |

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 year 2020.
7. This Decision and Order is effective for purposes of appeal on January 25, 2023.³²

Signed and Sealed: January 25, 2023

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

³² 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.