

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

CAPITOL PARK LLC,
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 20C 0112 &
21C 0489

DECISION AND ORDER
REVERSING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

For the Appellant:

Mark Becher,
Capitol Park LLC

For the Appellee:

Daniel J. Zieg,
Chief Deputy Lancaster
County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Steven A. Keetle. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a multi-tenant office building and commercial parcel located in Lancaster County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibits 4 and 20.

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined the assessed value of the Subject Property was \$1,339,200 for tax year 2020 and \$1,339,300 for tax year 2021. Capitol Park LLC (the Taxpayer) protested these assessments to the Lancaster County Board of Equalization (the

County Board). The County Board determined the taxable value of the Subject Property for tax year 2020 was \$1,339,200,¹ and \$1,339,300 for tax year 2021.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 7, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-35, 38, 40, and 42-50 were admitted into evidence. Exhibits 36, 37, and 41 were not admitted into evidence.

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

¹ Exhibit 1.

² Exhibit 2.

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).

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 in order to successfully claim that the Subject Property is 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

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).

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).

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.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

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).

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 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 of Mark Becher

Mark Becher is a member of Capitol Park LLC (the Taxpayer). Becher testified the Subject Property has limited on-site parking. Becher stated the Taxpayer paid \$960 per month in 2022, and approximately \$1,800 per month in 2020 and 2021, to provide off-site

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).

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.

parking for the Subject Property's tenants.²⁶ Becher asserts providing this off-site parking was necessary to command the lease rates for the Subject Property. Becher submitted two leases showing lease rates at \$10.85 per square foot and \$10.53 per square foot.²⁷ He argues both leases are well below the market rent figure of \$14.25 per square foot used in the Assessor's income approach calculation.

Becher also stated the Assessor's measurements of the Subject Property were incorrect. He testified he personally measured the interior of the Subject Property, including hallways and common areas, resulting in a total interior square footage of 16,525.676 square feet.²⁸ For comparison, the Property Record File for tax year 2020 lists the net rentable area at 17,695 square feet.²⁹ Becher argues the Subject Property was assessed with approximately 10% greater size than the rentable space of the Subject Property.³⁰

Becher also argued deferred maintenance of the Subject Property reduced its value. He indicated the need for new air conditioning units, roof replacement, and repairs to an elevator, as well as general replacement of windows, paint, and carpets. Becher indicated the repairs would cost approximately \$749,336.³¹

B. Testimony of Robert Stanley

Robert Stanley is a Senior Commercial Appraiser with the Lancaster County Assessor's Office and has been employed there since 1991.³² Stanley explained an income approach was used to value the Subject Property for tax years 2020 and 2021 as it is the standard method for valuing commercial lease property in Lancaster County. Stanley confirmed a gross area of 19,444 square feet for the Subject Property – measured on the outside walls of the Subject Property.³³

²⁶ Exhibit 40.

²⁷ Exhibits 46, 47.

²⁸ Exhibit 43.

²⁹ Exhibit 3:8.

³⁰ Exhibit 42.

³¹ Exhibits 42, 49, 50.

³² Exhibit 38.

³³ Exhibit 20:7.

Stanley indicated this measurement was made sometime prior to 2013 but does not believe any significant changes to this measurement would have occurred.

Stanley also indicated a net rentable measurement of 17,695 square feet.³⁴ Stanley stated this figure was an estimate that is applied in a similar manner to other commercial leasable space. He conceded this 'rough estimate' may not be accurate to the square footage of individual buildings. He also conceded that common areas such as hallways and stairwells, would generally be excluded from a property's net leasable space.

In applying the income approach methodology, Stanley indicated the market lease rate of \$14.25 was applied to the net rentable area of 17,695 square feet to determine a potential gross income (PGI). A vacancy and collection loss factor of 10% was deducted from the PGI to determine an estimated gross income (EGI). Next, a market expense rate of 35.90% was deducted from the EGI to determine a net operating income (NOI). The NOI was then divided by a market capitalization rate to determine a value for the Subject Property.

Regarding deferred maintenance, Stanley stated the Subject Property was assigned a condition rating of "2-Fair", which contemplated the deferred maintenance and would have warranted a higher market rent rate if the repairs had been completed. Stanley stated the market factors such as rent rates, expense rates, and capitalization rates are determined from market research on similar properties.

Stanley compared the income approach calculation result to twelve comparable properties which had sold within the three years prior to the respective assessment dates.³⁵ The comparables used were all

³⁴ *Id.*

³⁵ See Exhibits 7-18 and 23-34.

multi-tenant office buildings with a range of condition ratings and effective ages.³⁶

VI. ANALYSIS

“In general, for income-producing properties, the income approach is the preferred valuation approach when reliable income and expense data are available, along with well-supported income multipliers, overall rates, and required rates of return on investment.”³⁷

As Stanley explained, the county assessed the Subject Property using an income approach model which applied a market rent rate to the estimated rentable space to determine a potential gross income for the Subject Property. A market-typical vacancy, expense rate, and capitalization rate is applied to determine the value for each tax year.

Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.³⁸

Here, Stanley testified the market typical figures were based upon the collection and analysis of data from similar income-producing properties. While Becher alleges the lease rates for the Subject Property were lower and the expense rates were higher than the market rates assigned by the Assessor, no evidence was adduced to demonstrate the Subject Property’s income and expense figures were consistent with that found in the market and contemplated the

³⁶ See Exhibits 5, 21.

³⁷ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

³⁸ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

deferred maintenance presented by Becher. Accordingly, the Commission finds these figures to be reasonable and appropriate.

However, as Stanley conceded, the rentable square footage used to calculate the value of the Subject Property was an estimate based upon the exterior measurements of the building. To the contrary, Becher offered interior measurements including the rentable and common spaces of the Subject Property.³⁹ “[A] resident owner who is familiar with his or her property and knows its worth is permitted to testify as to its value without further foundation and [] this principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it.”⁴⁰

Becher’s interior measurements of the Subject Property were not rebutted by the County. The Commission finds Becher’s interior measurements demonstrate the square footage used in the County Board’s valuation was arbitrary and unreasonable. As such, the valuation set by the County Board is arbitrary and unreasonable.

As Becher’s calculations show, the Subject Property has a rentable square footage of 14,004.⁴¹ Using the County’s market rental rates, vacancy rates, and capitalization rates,⁴² an income approach calculation would result in a valuation of \$1,059,800.⁴³ As the County’s market rates were the same for both tax years at issue, the Commission finds this value to be the taxable value for the Subject Property for both tax years 2020 and 2021.

VII. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had

³⁹ Exhibit 43.

⁴⁰ *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 947, 911 N.W.2d 551, 561 (2018) (citing *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008)).

⁴¹ Exhibit 43.

⁴² See Exhibits 4:7, 20:7 for tax years 2020 and 2021, respectively.

⁴³ 14,004 sq.ft. * \$14.25 = \$199,557 PGI * 90% = \$179,601 EGI * 64.91% = \$116,579 NOI / 11% capitalization rate = \$1,059,809 (\$1,059,800 rounded).

sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board is vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the value of the Subject Property for tax years 2020 and 2021 are vacated and reversed.
2. The assessed value of the Subject Property for each of tax years 2020 and 2021 is **\$1,059,800**.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 May 29, 2024.⁴⁴

Signed and Sealed: May 29, 2024

SEAL



Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner

⁴⁴ 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.