

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Powell & Powell,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 20C 0256

Decision and Order Affirming the Decision
of the Douglas County Board of
Equalization

For the Appellant:

Kevin Powell,
Pro Se

For the Appellee:

Jennifer D. Chrystal-Clark
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 58,200 square foot distribution warehouse located at 6936 L Street in Omaha, Douglas County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$2,828,500 for tax year 2020.¹ Powell & Powell (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$1,631,439.² The County Board determined that the taxable value of the Subject Property for tax year 2020 was \$2,828,500.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on September 27, 2022 with Commissioner Hotz presiding. Prior to the hearing, the parties exchanged exhibits, as ordered by

¹ Exhibit 1.

² Exhibit 3.

³ Exhibitt 1.

the Commission. Pre-Hearing, the parties stipulated to the receipt of exchanged exhibits 1-6, and 11-17. During the Taxpayer's case in chief, Exhibits 8-10 were also received.

III. STANDARD OF REVIEW

The Commission's review of the determination by a county board of equalization is de novo.⁴ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the County Board's valuation was unreasonable or arbitrary.¹⁰

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

⁴ 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).

⁵ *Brenner* at 283, 811 (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹¹ The Commission may also take notice of judicially cognizable facts and in addition 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION AND EQUALIZATION

A. Valuation 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.¹⁴

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.¹⁵ Actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Id.*

¹⁶ *Omaha Country Club* at 180, 829 (2002).

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

B. Equalization Law

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.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.²³ 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.²⁴ 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.²⁵ The constitutional requirement of uniformity in taxation extends to both rate and valuation.²⁶ If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment.²⁷ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁸

C. Facts & Analysis

Keith Nielsen testified on behalf of the County Board. Nielsen is a real estate specialist for the County Assessor. Nielsen testified that he used an income approach to value the Subject Property. The improvement was measured at 58,200 square feet and was rated as average quality

²⁰ *Neb. Const.*, Art. VIII, § 1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *Id.*; *Cabela's Inc. v. Cheyenne County Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²³ *Cabela's Inc.* at 582, 623.

²⁴ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁵ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁶ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁷ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁸ *Id.* at 673, 94 N.W.2d at 50.

and average condition. The Subject Property was grouped in a commercial market area identified and numbered as 40803.²⁹ Nielsen testified that he used relevant sales and rental market data to develop a model for 40803, bracketing the relevant data to determine typical income approach details. The income approach for each property in 40803 with average quality and average condition used a rental rate of \$4.50 per square foot, a vacancy and collection loss rate of 10%, an expense rate of 10%, and a capitalization rate of 7.5%. For the Subject Property, this resulted in an assessed value of \$2,828,500, rounded. After the protest proceeding, the County Board agreed with the assessment value.

Kevin Powell testified as one of the owners of the Subject Property. Powell asserted that the improvement had significant maintenance and repair costs since 2000, when he and Robert Powell purchased the property, including the repair or replacement of two sections of the roof, and mud jacking of some of the hardtop exterior paving. Powell did not quantify these costs in relation to the market value of the Subject Property for tax year 2020.

Monte Bowman testified on behalf of the Taxpayer. Bowman asserted that the Subject Property should have a fair condition rating rather than an average rating. He also asserted that the County Board should have considered the comparable properties included in Exhibits 8-10.

Based upon the evidence received, the Commission cannot conclude that clear and convincing evidence was adduced that the Subject Property should be rated at anything other than average condition. Further, the Commission finds that the application of the market data for neighborhood 40803 to the income approach used to value the Subject Property was reasonable.

The Commission notes that the income approaches used by the County Assessor to value the properties in Exhibits 9 and 10 differed from the income approach used to value the Subject Property. However, Nielsen testified that different market data was used to develop the model to value 50803.³⁰ Based upon that un rebutted testimony, the Commission finds that it was not unreasonable for the County Board to consider the 50803 properties as not being comparable to the Subject Property.

The Commission also notes that the property in Exhibit 8 was in 40803, it was rated as average quality and average condition, and the same income approach was applied to reach its

²⁹ Nielsen described 40803 as a Commercial corridor along L Street.

³⁰ Nielsen described 50803 as the Commercial market area just north of 40803.

assessed value as was used for the Subject Property. This was not unreasonable and did not result in a lack of assessment uniformity as required by law.

V. 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 the reasons set forth above, the appeal of the Taxpayer is denied, and the decision of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.³¹
2. The taxable value of the Subject Property for tax year 2020 is \$2,828,500.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas 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.

³¹ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest 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 September 29, 2022.³²

Signed and Sealed: September 29, 2022

Robert W. Hotz, Commissioner

SEAL

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.