

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

ARMOR STORAGES LLC
APPELLANT,

CASE NO: 20C 0452

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

For the Appellant:

Arun Agarwal,
Member

For the Appellee:

Jennifer D. Chrystal-Clark
Deputy Douglas County Attorney

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

I. THE SUBJECT PROPERTY

The Subject Property is a .78-acre parcel improved with commercial storage units located at 1109 N. 47th Street in the city of Omaha, Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,030,700 for tax year 2020. Armor Storages LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board

determined that the taxable value of the Subject Property for tax year 2020 was \$1,030,700.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on January 5, 2023 regarding Case Nos. 20C 0452 and 20C 0453. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-6 and 8-20 were admitted into evidence. Exhibit 7 was not 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 except as otherwise provided in or permitted by the Nebraska

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).

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

A. Summary of the Evidence

Arun Agarwal testified on behalf of the Taxpayer. Agarwal is a member of the Appellant LLC. Agarwal stated that he was involved in the design-build process for the Subject Property. Agarwal argued that the Douglas County Referee's comments were incomplete at best and ultimately failed to provide an accurate assessment of the Subject

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.

Property to the County Board.²⁵ Agarwal admits that he is not a trained appraiser.

Agarwal argued that neither the Assessor's measurements nor the County Board's comparable properties adequately account for a "load factor," which Agarwal defines as an interior space such as hallways and common areas inside the buildings, which are not rented out, and therefore provide no income. Agarwal states that the combined leasable space²⁶ within the Subject Property is 15,300 square feet, whereas the assessed total square footage is 20,678 square feet.²⁷ Agarwal concedes that the County Board's use of a 10% vacancy rate is close to the actual vacancy rate of the Subject Property.

The Appellant called Keith Nielsen to testify. Nielsen has over 23 years of experience with the Douglas County Assessor's office and is employed as a real estate specialist, primarily valuing commercial and industrial properties in Douglas County. Nielsen was personally involved in the appraisal of the Subject Property. Nielsen is not currently a licensed appraiser but was a registered appraiser in the past.

Nielsen testified that when meeting with owners of income-producing properties, the Assessor's office will request actual income and expense data, which is used to calibrate and refine the mass appraisal model used to assess similar properties. Nielsen stated that when assessing an income-producing property, including the Subject Property, the Assessor's Office uses a rental rate based upon gross exterior square footage.

In explaining the gross rental rate, Nielsen stated that he did not add value to the assessment for the climate control present because only one building on the Subject Property had climate control. Nielsen

²⁵ See, Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

²⁶ Exhibit 6:1.

²⁷ Exhibit 2:11-13 (5,000 sq. ft. + 7,128 sq. ft. + 8,550 sq. ft. = 20,678 sq. ft.)

stated that if the entire Subject Property had climate control, a higher rental rate would have been appropriate.

Nielsen stated that he recognizes two separate mass appraisal neighborhoods²⁸ for mini-storage units in Douglas County and that the Subject Property and the comparable properties used for equalization purposes were drawn from the same neighborhood.²⁹ Nielsen also stated that when collecting the raw income and expense data from various storage facilities throughout Douglas County, the variance in data between different geographical parts of Douglas County was not great enough to warrant the creation of separate mass appraisal models within the Omaha area, but rather the data supported using two models – one for properties east of 204th Street, and another for properties west of 204th Street.

Nielsen explained that a gross rental rate is also applied to properties such as apartment buildings and other storage units that tend to have common areas. Nielsen did concede that if a property had an excessive amount of common area, an adjustment may be warranted in that situation. Nielsen further stated that in reviewing the data for mini-storage facilities, there was not enough variance in the data to warrant alteration of the assessment model to separately value common areas.

B. Analysis

“The appraisal of real estate is not an exact science.”³⁰ 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

²⁸ The term ‘neighborhood’ in this sense does not relate to proximity to the Subject Property but instead is a designation of a certain type of property for purposes of comparison.

²⁹ See Exhibit 8:1.

³⁰ *In re Estate of Bock*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977).

are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.³¹

The Appellant asserts the common areas inside of the improvements are incorrectly assessed as rentable storage space, when this space is not, in fact, rented to customers, and therefore does not produce income. Further, the failure of the County Board to account for this common area space results in an unequal tax burden placed upon the Subject Property as compared to similar properties that have no assessed common area space.

The Commission is not persuaded by Appellant's arguments. As noted above, the revenue rate used to calculate a potential gross income (PGI) figure is based upon typical management across comparable businesses. Mass appraisal applications of the income approach begin with collecting and processing income and expense data. (These data should be expressed on an appropriate per-unit basis, such as per square foot or per apartment unit.) Appraisers should then compute normal or typical gross incomes, vacancy rates, net incomes, and expense ratios for various homogeneous strata of properties. These figures can be used to judge the reasonableness of reported data for individual parcels and to estimate income and expense figures for parcels with unreported data.³²

In this case, Appellant adduced no evidence that any portion of the square footage inside each building was used for a purpose other than as a storage facility. While the Commission recognizes that some common-area square footage within the Subject Property is not *directly* rented to Appellant's customers, that common-area square footage still contributes to the use of the income-producing rented space. The

³¹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

³² International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

manner and extent to which Appellant chooses to utilize the building's interior space for rental is just that – a management choice.

Further, the Appellant has adduced no evidence to demonstrate that similarly situated storage units were assessed in a different manner than the Subject Property or that non-rented interior space was assessed for other storage units separately, or at a different value.

Therefore, the Commission finds that the Appellant has not demonstrated by clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. Instead, as Nielsen's testimony demonstrates, the same valuation was consistently applied to the square footage of similar storage units within the same market area. This practice is consistent with professionally approved mass appraisal standards, and therefore comports with Nebraska law.³³

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 should be affirmed.

³³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the 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	\$ 137,600
<u>Improvements</u>	<u>\$ 893,100</u>
Total	\$ 1,030,700

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.
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 March 10, 2023.³⁴

Signed and Sealed: March 10, 2023



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁴ 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.