

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

WILLIAM R. KNOX  
APPELLANT,

CASE NOS: 20C 0531 &  
20C 0540

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
REVERSING THE DECISIONS  
OF THE DOUGLAS COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Properties consist of improved commercial parcels in Douglas County, Case No 20C 0531 is for parcel number 2153018002 (Building 1) and Case No. 20C 0540 is for parcel number 2153018008 (Building 3).
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 20C 0531 at \$275,200 and the Subject Property in Case No. 20C 0540 at \$300,300.
3. William R. Knox (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property in Case No. 20C 0531 at \$275,200 and the Subject Property in Case No. 20C 0540 at \$300,300.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on January 10, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. William R. Knox was present at the hearing for the Taxpayer.

8. Keith Nielsen with the County Assessor's Office (the County Appraiser) was present for the County Board.

## II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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 sufficient competent evidence to justify its action."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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, 759 N.W.2d 464, 473 (2009).

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

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Properties are commercial parcels improved with industrial flex mall buildings located on North 84<sup>th</sup> circle. Building 1 was constructed in 1995 and Building 3 was constructed in 1997.
17. The Taxpayer alleges that the Subject Properties are not valued uniformly and proportionally with other comparable properties.
18. The Taxpayer also owns another commercial parcel improved with an industrial flex mall building located between Building 1 and Building 3 on North 84<sup>th</sup> Circle (Building 2) that was constructed in 1996.
19. The Taxpayer presented the Property Record File (PRF) for Building 1, Building 2, and Building 3.
20. The PRF for Building 1, Building 2, and Building 3 show that the majority of the characteristics of these three buildings are substantially similar except that Building 1 and Building 3 have a condition rating of average while Building 2 has a condition rating of fair.

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<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

<sup>7</sup> *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. The PRF's show that the three properties are valued using an income model but that Building 2 uses a lower rental rate and a lower capitalization rate than Building 1 and Building 3.
22. The County Appraiser stated that the reason for the different numbers applied to the different properties was the difference in the condition rating.
23. The County Board presented the PRF for two industrial flex mall buildings for equalization purposes as well as the PRF for a recent sale of industrial flex mall buildings.
24. The County Appraiser discussed the collection of income and expense information as well as the sales data utilized in the creation of the income model for industrial flex mall buildings.
25. The County Appraiser stated that the condition rating determinations for Building 1, Building 2, and Building 3 were made by the County Assessor's office employee that inspected Building 1, Building 2, and Building 3 prior to the assessment at issue in these appeals.
26. The County Appraiser stated that for the subsequent tax year the condition of Building 1, Building 2, and Building 3, were determined to all be rated average for assessment purposes.
27. From the information presented the Commission finds that Building 1, Building 2, and Building 3 are all of the same condition, but Building 1 and Building 3 have been classified as having an average condition rating while Building 2 has been classified as having a fair condition rating.
28. "Misclassifying property may result . . . in a lack of uniformity and proportionality. In such an event the taxpayer is entitled to relief."<sup>9</sup>
29. In the present appeals the misclassification has resulted in valuations between Building 1, Building 2, and Building 3 that are not uniform and proportionate.

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<sup>9</sup> *Beynon Farm Products v. Bd. of Equal. of Gosper County*, 213 Neb. 815, 819, 331 N.W.2d 531, 534 (1983).

30. "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."<sup>10</sup>
31. The Commission finds that uniform and proportionate value can be achieved by assessing Building 1 and Building 3 using the fair condition valuation model.
32. The value of Building 1 using the fair condition model is \$188,800.<sup>11</sup>
33. The Value of Building 3 using the fair condition model is \$206,000.<sup>12</sup>
34. The Commission finds and determines that the equalized value of Building 2 is \$188,800 and the equalized value of Building 3 is \$206,000
35. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
36. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

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<sup>10</sup> *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

<sup>11</sup> \$4.75 (Rate) x 5,280 sq ft = \$25,080  
 20% vacancy = \$5,016  
 EGI = \$20,064  
 20% Expenses = \$4,013  
 NOI = \$16,051  
 Capitalization Rate 8.50%  
 Final Indicated Property Value (Rounded) = \$188,800

<sup>12</sup> \$4.75 (Rate) x 5,760 sq ft = \$27,360  
 20% vacancy = \$5,472  
 EGI = \$21,888  
 20% Expenses = \$4,378  
 NOI = \$17,510  
 Capitalization Rate 8.50%  
 Final Indicated Property Value (Rounded) = \$206,000

#### IV. ORDER

##### IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2020 is:

**Case No. 20C 0531:** \$188,800

**Case No. 20C 0540:** \$206,000

3. This Decision and Order, if no further action is taken, 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 on April 25, 2023.

Signed and Sealed: April 25, 2023



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Steven A. Keetle, Commissioner