

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

THE MONEY EXPRESS  
APPELLANT,

CASE NO: 21C 0043

V.

ADAMS COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

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

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Adams County, parcel number 010006876.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$686,960 for tax year 2021.
3. The Money Express (the Taxpayer) protested this value to the Adams County Board of Equalization (the County Board) and requested an assessed value of \$363,145 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$686,960 for tax year 2021.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 21, 2022, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor., before Commissioner James D. Kuhn.
7. Kuldip Singh was present at the hearing for the Taxpayer.
8. Jackie Russell (the Assessor) 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 Taxpayer stated the Subject Property is a low-income housing project (Section 42 Housing) and has rent restrictions.<sup>9</sup> The Taxpayer stated he purchased the Subject Property but did not realize it was still under a Land Use Restriction Agreement (LURA).
17. The Taxpayer provided five comparable properties to show similar properties with a lower price per unit (PPU). None of the comparable properties provided by the Taxpayer have a Property Record File (PRF) for the Commission to analyze the comparability with the Subject Property. Without any PRFs the Commission cannot make viable comparisons to determine if the County Boards decision was arbitrary or unreasonable.
18. Nebraska law provides that the owner of a rent-restricted housing project is entitled to have their rent-restricted properties valued using the income-approach method and using the actual income and expense data from the property, to calculate the actual value of the property. However, in order for

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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).

<sup>9</sup> See generally Neb. Rev. Stat. § 77-1333 (Reissue 2018).

a property owner to have the benefit of this statute, certain documentation is required each year.<sup>10</sup>

19. The Assessor stated the Taxpayer did not provide the State with the statutorily-required documentation for Section 42 Housing.

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20. The Assessor stated she is still required to value the Subject Property even though the Taxpayer did not submit the required information to the State. The Assessor stated she is valuing the Subject Property as though it is not rent restricted since she did not receive any of the required information from the State that the Taxpayer is required to file. The statute provides that if the required information is not timely provided by the property owner, the County Assessor may use any professionally-accepted mass appraisal method to value the property. .<sup>12</sup>

21. The Assessor provided two comparable properties that are not being valued with Section 42 rent restrictions, but instead valued using professionally accepted mass appraisal methods. One is across the street from the Subject Property and the other is about three blocks away. The PPU of the comparable properties is \$41,964 and \$37,740 and the PPU of the Subject Property is \$38,164. The Commission finds the Subject Property is being valued similarly to comparable properties per Neb. Rev.

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<sup>10</sup> Neb. Rev. Stat. § 77-1333 (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-1333(5) (Reissue 2018) (“The owner of a rent-restricted housing project shall file a statement electronically on a form prescribed by the Tax Commissioner with the Rent-Restricted Housing Projects Valuation Committee on or before July 1 of each year that details actual income and actual expense data for the prior year, a description of any land-use restrictions, a description of the terms of any mortgage loans, including loan amount, interest rate, and amortization period, and such other information as the committee or the county assessor may require for purposes of this section. The Department of Revenue, on behalf of the committee, shall forward such statements on or before August 15 of each year to the county assessor of each county in which a rent-restricted housing project is located”)

<sup>12</sup> Neb. Rev. Stat. § 77-1333(9) (Reissue 2018) (“If the actual income and actual expense data required to be filed for a rent-restricted housing project under subsection (5) of this section is not filed in a timely manner, the county assessor may use any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112.”)

Stat. § 77-1333(9) using professionally accepted mass appraisal methods as required by Neb. Rev. Stat. § 77-112.

22. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

#### **IV. ORDER**

##### **IT IS ORDERED THAT:**

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$63,145
<u>Improvements</u>	<u>\$623,815</u>
Total	\$686,960

3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams 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 2021.
7. This Decision and Order is effective on January 6, 2023.

Signed and Sealed: January 6, 2023



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James D. Kuhn, Commissioner