

**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

For the Appellant:

Kuldip Singh,
Member

For the Appellee:

David Bergin,
Deputy Adams County Attorney

This appeal was heard before Commissioners Steven Keetle and Robert Hotz.

I. THE SUBJECT PROPERTY

The Subject Property is a 1.43-acre commercial parcel located in Adams County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Adams County Assessor determined that the assessed value of the Subject Property was \$686,960 for tax year 2021. The Money Express (the Taxpayer) protested this assessment to the Adams County Board of Equalization (the County Board) and requested a taxable value of \$363,145. The County Board determined that the taxable value of the Subject Property for tax year 2021 was \$686,960.¹

¹ Exhibit 1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 2, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-19 were admitted into evidence by stipulation of the parties.

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

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

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.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

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

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).

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 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

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).

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

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 AND ANALYSIS

A. Summary of Evidence

The Subject Property is a 1.43-acre parcel improved with nine duplexes, containing eighteen residential units, constructed in 1995.²⁵ Five of the duplexes have attached double garages. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties. To support this allegation the Taxpayer presented Property Record Files (PRF) and information from the Adams County Assessor's web site regarding four properties he alleged were comparable to the Subject Property but had assessed values that resulted in a lower price per unit (PPU) than the Subject Property. The properties presented by the Taxpayer are an historic brewery constructed in 1890 and renovated into thirty-five residential

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.

²⁵ Exhibit 4

lofts,²⁶ a twenty-four-unit single story apartment building,²⁷ a forty-unit assisted living facility,²⁸ and a sixty-six-unit three story apartment building.²⁹

The Brewery property was rehabilitated under statutory provisions regarding historically significant real property³⁰ and for tax year 2021 assessed based on its value prior to restoration work.³¹ For the Brewery property this was its value in 2016.³² The assessed value of this property does not reflect market value as a portion of its value is effectively exempted under this program.³³

The one-story apartment building is subject to restrictions under the low-income housing tax credit program in Section 42 of the Internal Revenue Code. Under Nebraska law, Section 42 Rent Restricted Housing Projects are required to be valued using an income-approach calculation found in statute, but only if the owner of the project files income and expense information with the Rent-Restricted Housing Projects Valuation Committee.³⁴ The required income and expense information was filed with the Rent-Restricted Housing Projects Valuation Committee for this parcel, and was valued using the statutorily-mandated income-approach calculation.³⁵

The County Assessor testified that the four properties offered by the Taxpayer are different styles of property and valued using different valuation models.

The County Board presented the PRF for a property located directly across the street from the Subject Property. This property is a 1.40-

²⁶ Exhibit 12

²⁷ Exhibit 13 and Exhibit 15.

²⁸ Exhibit 14

²⁹ Exhibit 16 and Exhibit 17

³⁰ Exhibit 18

³¹ See, Neb. Rev. Stat §77-1385 et. seq (Reissue 2018)

³² See Exhibit 12 page 9

³³ See, Constitution of the State of Nebraska, Art VIII, Sec 2(12) and Neb. Rev. Stat §77-1385 et. seq (Reissue 2018)

³⁴ Neb. Rev. Stat. §77-1333 (Reissue 2018)

³⁵ Exhibit 19

acre parcel improved with eight duplexes constructed in 1998.³⁶ This parcel also has a free-standing garage structure.

The County Board also presented the PRF for a 0.70-acre parcel improved with two fourplexes constructed in 1978.

The Taxpayer alleged that the Subject Property is subject to restrictions as a rent restricted housing project under Section 42 of the Internal Revenue Code. The Taxpayer did not file income and expense information for the 2021 assessment year and the County Assessor testified that her office had not received income and expense information from the Department of Revenue for the Subject Property since 2018.³⁷ The Taxpayer argued that he thought these use restrictions had expired prior to the Taxpayer's purchase of the Subject Property.

A. Analysis

The Taxpayer argues that the assessed value of the Subject Property was not equalized with other comparable properties on a PPU basis. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.³⁸ The four properties presented by the Taxpayer as comparable properties have significant differences in characteristics from the Subject Property. The Subject Property is a single parcel improved with nine duplexes, some of which have attached garages. All four of the properties presented by the Taxpayer are improved with single buildings containing 24 to 66 living units. None of the Taxpayer's four properties has garages for parking as part of the improvements. The four properties presented by the Taxpayer are not comparable to the Subject Property.

The property located across the street from the Subject Property that was presented by the County Board is the most comparable to the

³⁶ Exhibit 5

³⁷ See, Exhibit 9

³⁸ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

Subject Property and its assessed valuation is slightly higher than the Subject Property on a PPU basis, due in part to its slightly newer year built. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.

The Taxpayer argues that the value of the Subject Property should be reduced due to the restrictions placed upon it as a rent restricted housing project under Section 42 of the Internal Revenue Code.

The Legislature provided that the owner of a rent-restricted housing project is entitled to have their rent-restricted properties valued using the income-approach calculation and using the actual income and expense data from the property, to calculate the actual value of the property.

However, in order for a property owner to have the benefit of this statute, certain documentation is required each year.³⁹ The Taxpayer did not provide the documentation to the Rent-Restricted Housing Projects Valuation Committee as required to have the benefit of this provision of statute. Further the Taxpayer did not provide the income and expense information for the Subject Property to allow the Commission to determine if the income-approach calculation for rent restricted properties would be different than its current assessed value.

The Taxpayer failed to produce any other information to show what the restrictions on the Subject Property are or to allow the Commission to quantify the impact of any restrictions under Section 42 of the Internal Revenue Code on the Subject Property.

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

³⁹ Neb. Rev. Stat. § 77-1333 (Reissue 2018).

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 is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Adams County Board of Equalization determining the value of the Subject Property for tax year 2021 is affirmed.
2. The assessed 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 appeal is timely filed, 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 for purposes of appeal on September 19, 2024.⁴⁰

Signed and Sealed: September 19, 2024

SEAL



Steven A. Keetle, Commissioner

Robert W. Hotz, Commissioner

⁴⁰ 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.