

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

POWELL PROPERTIES &
MANAGEMENT LLC
APPELLANT,

CASE NOS: 22C 0607, 21C
0661

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property consists of an improved commercial parcel in Lancaster County, parcel number 05-21-311-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$735,000 for tax year 2021 and \$838,500 for tax year 2022.
3. Powell Properties & Management LLC (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$735,000 for tax year 2021 and \$838,500 for tax year 2022.
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 June 12, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Dawn M. Powell was present at the hearing for the Taxpayer.

8. Phillip Hughes (the 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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
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.⁵

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² 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).

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

⁴ *Id.* at 283-84.

⁵ 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.⁶
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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a 12-unit apartment building located in the village of Malcolm which is roughly 10 miles northwest of the city of Lincoln. The Taxpayer stated the city of Malcolm is a commuter city that has no gas station, no grocery store and doesn't have paved streets. The Taxpayer stated the Subject Property is important to the small village as evidenced by a supportive letter from the Village Clerk of Malcolm.
17. The Taxpayer stated they rent the 2-bed and 1-bath apartments to elderly and single tenants only. The Taxpayer asserted they could not raise rents even though there are no rent restrictions on the Subject Property. The Taxpayer stated they haven't raised rents for several years to help the tenants - who are elderly or mostly single parents with children - have affordable housing.
18. The Taxpayer opined the Subject Property is being treated like apartments in the larger city of Lincoln and feels like an economic factor needs to be applied to the Subject Property since it is in a small community.

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

⁷ *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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Taxpayer provided an appraisal for tax year 2021 with an indicated value of \$650,000.
20. The County Appraiser stated the Subject Property was valued off an appraisal model used for similar properties. The County Appraiser stated current typical market rents are higher than the current rents being charged by the Taxpayer. The Taxpayer is charging \$595 per month, whereas the County Appraisers model indicates current rents are \$680 for similar units.
21. The County Appraiser stated the Taxpayers appraisal used the actual rents of the Subject Property for the income approach which are lower than current market rents.
22. After reviewing the Taxpayers appraisal, the Taxpayer's appraiser used actual rents of the Subject Property instead of using market rents. The current rents being charged by the Taxpayer are admittedly lower than current market rents. The appraisal's sales comparison approach used four comparables, however only two of the comparable properties were similar in number of units, both having 14 units as compared to the Subject Property's 12 units. The two closest comparables indicated a per unit value between \$59,286 and \$71,429, with the lower valued sale being an inferior property and the higher valued property being similar. The appraiser used a per unit value of \$53,000.
23. 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 are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.⁹

⁹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

24. “Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties).”¹⁰
25. The Commission finds the income and expense figures reported in the Taxpayer’s appraisal do not reflect the typical figures for similar properties. Accordingly, the Commission affords the Taxpayer’s appraisal little weight.
26. No appraisal was offered for the Subject Property for tax year 2022.
27. 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.
28. The Taxpayer has not 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 affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are affirmed.
2. The taxable value of the Subject Property for tax years 2021 and 2022 is:

	<u>2021</u>	
Total		\$735,000
	<u>2022</u>	
Total		\$838,500

¹⁰ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 years 2021 and 2022.
7. This Decision and Order is effective on October 3, 2023.

Signed and Sealed: October 3, 2023



James D. Kuhn, Commissioner