

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

ASHFORD HOSPITALITY,
APPELLANT,

CASE NOS: 21C 0676 &
22C 0602

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

For the Appellant:
Timothy Moll,
Rembolt Ludtke, LLP

For the Appellee:
Jennifer D. Chrystal-Clark,
Deputy Douglas County
Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property for tax years 2021 and 2022 are found at Exhibits 4 and 6 respectively.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$17,252,900 for tax year 2021. Ashford Hospitality (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a

lower taxable value. The County Board determined that the taxable value of the Subject Property for tax year 2021 was \$17,252,900.¹

The Douglas County Assessor determined that the assessed value of the Subject Property was \$17,252,900 for tax year 2022. The Taxpayer protested this assessment to the County Board and requested a lower taxable value. The County Board determined that the taxable value of the Subject Property for tax year 2021 was \$17,252,900.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 14, 2023. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1 through 8 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.³ 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.⁴

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

¹ Exhibit 1.

² Exhibit 2.

³ 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).

⁴ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

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.⁵

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.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ 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.⁹

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.¹⁰ 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

⁵ *Id.*

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁸ 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).

⁹ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

evaluation of the evidence presented to it.¹¹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹²

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.¹³

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.¹⁴ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁵ 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.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and

¹¹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁶ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁷ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

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.¹⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁵

¹⁸ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁹ Neb. Const., art. VIII, § 1.

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²¹ *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).

²² *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²³ *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).

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

V. FINDINGS OF FACT AND ANALYSIS

The Subject Property is a commercial parcel improved with a full-service hotel known as Marriott Omaha located on Regency Circle in Omaha, Douglas County, Nebraska. The Subject Property was constructed in 1981 or 1982 and is a six-story building with 300 rooms as well as meeting space, an indoor swimming pool, a fitness center, and other amenities.

The Taxpayer offered the testimony of Bryan Younge, MIA, ASA, FRICS, a Certified General Real Property Appraiser in Nebraska and over thirty other states.²⁶ Younge primarily works with commercial properties and more specifically hospitality, gaming, and leisure properties, a specialty practice that includes the valuation of hotels. Younge inspected and appraised the Subject Property and prepared Appraisal Reports with determinations of market value for going concern and the taxable real property component of the Subject Property as of January 1, 2021, 2022 and 2023.²⁷ The Appraisal Reports indicate that they were prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice.²⁸

For each of the appraisal reports Younge performed and considered the sales comparison approach and two different methods of the income approach to value. Younge testified that the cost approach to value was not performed due to the age of the property and difficulty in determining depreciation factors. Younge reconciled the results of the different valuation methodologies and determined the value of the Subject Property as a going concern, based primarily on the income approach to value. Young further testified that the going concern value included the value of the taxable real property as well as non-real property which includes and is known as furniture, fixtures, and equipment or FF&E. Younge discussed the analysis done to remove the

²⁶ See, Exhibit 7 page 173.

²⁷ Exhibits 7 and 8

²⁸ E7:5, E8:5

contribution of value of the FF&E from the value of the real property based on a combination of development cost surveys, the Marshall Valuation Services Manual, and the development costs and budgets and requirements of multiple hotel projects that he has reviewed.

Younge testified regarding the relationship of the Omaha market to national trends, particularly in the specialized hotel industry, as well as the impact of the COVID-19 pandemic and the recovery of the hotel industry from that pandemic in the assessment years at issue before the Commission in these appeals. Younge discussed the use of sales from other cities as well as the specific sales comparables utilized in the sales comparison approach determination in the Appraisal Report.

Based on his analysis Younge determined that the value of the real property component of the Subject Property was \$7,357,000 for tax year 2021²⁹ and \$7,150,000 for tax year 2022.³⁰

Finally, Younge was questioned about the determination of value found in the Property Record Card (PRF) for the Subject Property.³¹ Younge testified that he was unable to determine the basis for the occupancy rate utilized in the County Assessor's income approach methodology from the information contained in the exhibits before the Commission. Younge further testified that in his experience the expense percentage utilized by the County Board was lower than that experienced by "the best performing hotel in the country on its best day". Younge stated that the income approach to value for the Subject Property as contained in the PRF was not a reasonable way to determine the value of the Subject Property as he was unable to determine how any of the metrics utilized were derived at any point.

In valuation appeals to the Commission, a presumption exists that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient

²⁹ Exhibit 7 page 120.

³⁰ Exhibit 8 page 158.

³¹ Exhibit 5.

competent evidence to justify its actions.³² The presumption disappears when competent evidence to the contrary is presented.³³ When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.³⁴ In the present appeals, the Taxpayer offered appraisals by an independent appraiser certified as being performed according to professional standards for tax years 2021 and 2022, and has overcome the presumption in favor of the determination of the County Board.

The Commission finds the determinations of value for the Subject Property found in the Appraisal Reports persuasive. In addition to the supporting materials found in the reports themselves the answers of Mr. Younge to the questions of counsel regarding his methodology supported his analysis. Younge's experience in performing appraisal of hotel properties gives the Commission confidence in his ability to select comparable properties and to determine which values to utilize when the data yield a range of potential values. The information regarding the County's assessment of the Subject Property does not contain the supporting detail that Younge's Appraisal Reports do and no explanation to the questions regarding the income approach contained in the PRF was offered.

The Commission finds that Younge's opinion of value accurately reflects the market value of the taxable real property value of the Subject Property for tax years 2021 and 2022. These opinions constitute competent evidence to rebut the presumption in favor of the County Board's determinations, and furthermore constitutes clear and

³² See Neb. Rev. Stat. § 77-5016(9); *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013); *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) note 7 (citing *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

³³ *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013), note 34.

³⁴ *JQH La Vista Conf. Ctr. Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

convincing evidence that the County Board's determinations were unreasonable for tax years 2021 and 2022.

VI. CONCLUSION

The Commission finds that there is 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 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 vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2021 and 2022 are vacated and reversed.
2. The assessed value of the Subject Property for tax year 2021 is:
\$7,357,000.
3. The assessed value of the Subject Property for tax year 2022 is:
\$7,150,000,
4. 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)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2021 and 2022 respectively.

8. This Decision and Order is effective for purposes of appeal on October 22, 2024.³⁵

Signed and Sealed: October 22, 2024

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

³⁵ 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.