

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

CYPRESS LLC ET AL,
APPELLANTS,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 21C 0720,
21C 0721, 21C 0722,
21C 0723, 22C 0770

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

For the Appellant:

Nicholas Sullivan,
Dvorak Law Group LLC

For the Appellee:

Jennifer Chrystal-Clark,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTIES

The Subject Properties are commercial parcels located in Omaha, Douglas County, Nebraska, respectively owned by the appellants. Each of the four appellants, Cypress LLC, MB&F Investments LLC, Personal Storage Center LLC, and Stellar LLC (collectively, the Taxpayers) were doing business as a Milt's Mini Storage and were located within the City of Omaha. Each Subject Property is improved with multiple buildings containing mini storage units that are rented for personal storage. The legal descriptions and Property Record Files (PRF) of the Subject Properties are found at Exhibits 6, 8, 10, 12, and 14 respectively.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined the assessed value of the Subject Property in Case No. 21C 0720 was \$3,372,100 for tax year 2021. Cypress LLC protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a taxable value of \$3,300,000.¹ The County Board determined the taxable value of the Subject Property for tax year 2021 was \$3,372,100.²

The Douglas County Assessor (the County Assessor) determined the assessed value of the Subject Property in Case No. 21C 0721 was \$6,823,600 for tax year 2021.³ MB&F Investments LLC protested this assessment to the County Board and requested a taxable value of \$5,000,000.⁴ The County Board determined the taxable value of the Subject Property for tax year 2021 was \$6,823,600.⁵

The County Assessor determined the assessed value of the Subject Property in Case No. 22C 0770 was \$6,823,600 for tax year 2022.⁶ MB&F Investments LLC protested this assessment to the County Board and requested a taxable value of \$5,000,000.⁷ The County Board determined the taxable value of the Subject Property for tax year 2022 was \$6,823,600.⁸

The County Assessor determined the assessed value of the Subject Property in Case No. 21C 0722 was \$4,383,300 for tax year 2021.⁹ Personal Storage Center LLC protested this assessment to the County Board and requested a taxable value of \$3,800,000.¹⁰ The County

¹ Exhibit 7:1.

² Exhibit 1.

³ Exhibit 2:1.

⁴ Exhibit 9:1.

⁵ Exhibit 2.

⁶ Exhibit 3:1.

⁷ Exhibit 11:1.

⁸ Exhibit 3.

⁹ Exhibit 4:1.

¹⁰ Exhibit 13:1.

Board determined the taxable value of the Subject Property for tax year 2021 was \$4,383,300.¹¹

The County Assessor determined the assessed value of the Subject Property in Case No. 21C 0723 was \$4,650,700 for tax year 2021.¹² Stellar LLC protested this assessment to the County Board and requested a taxable value of \$4,400,000.¹³ The County Board determined the taxable value of the Subject Property for tax year 2021 was \$4,650,700.¹⁴

The Taxpayers appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-55 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.¹⁵ When the Commission considers an appeal of a decision of a county board of equalization there are two burdens of proof.¹⁶ The first involves a presumption 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.¹⁷ That presumption remains until there is competent evidence to the contrary

¹¹ Exhibit 4.

¹² Exhibit 5:1.

¹³ Exhibit 15:1.

¹⁴ Exhibit 5.

¹⁵ 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).

¹⁶ *Pinnacle Enters. v. Sarpy Cty. Bd. of Equal.*, 320 Neb. 303, 309, __N.W.3d. __ (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

¹⁷ *Pinnacle Enters.*, 320 Neb. at 309, __N.W.3d at __ (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.¹⁸

The second burden of proof requires that 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.¹⁹ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.²⁰

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.²¹ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²²

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²³ 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.²⁴

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.²⁵ The Commission may consider all questions necessary to determine taxable value of property as it hears

¹⁸ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

¹⁹ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

²⁰ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

²¹ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

²² *Pinnacle Enters.*, at 309-10, ___ N.W.3d at ___; *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²³ 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).

²⁴ *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

²⁵ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

an appeal or cross appeal.²⁶ 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.²⁷ The Commission's Decision and Order shall include findings of fact and conclusions of law.²⁸

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.²⁹

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.³⁰ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.³¹ 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.³² All real property in

²⁶ *Id.*

²⁷ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

²⁹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

³⁰ *Id.* (citing Neb. Rev. Stat. § 77-1371 (Reissue 2018)).

³¹ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

³² Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.³³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁴

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.³⁵ “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.”³⁶ 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.³⁷ 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.³⁸ 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.³⁹ 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.⁴⁰ There

³³ See Neb. Rev. Stat. § 77-1301(1) (Laws 2019, LB512, § 14, eff. May 30, 2019).

³⁴ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

³⁵ Neb. Const., art. VIII, § 1.

³⁶ *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁷ *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 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).

³⁸ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁹ *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).

⁴⁰ *Pinnacle Enters.*, 320 Neb. at 309–10, ___ N.W.2d at ___ (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁴¹

V. FINDINGS OF FACT

A. Summary of the Evidence

1. Characteristics of the Subject Properties

The primary and relevant characteristics of each of the Subject Properties are as follows:

a. 3320 S. 60th Street (Cypress LLC)

This is the Subject Property in Case No. 21C 0720. Cypress LLC operated it as Milt's Mini Storage #8. It included 11 storage unit buildings and one office building.⁴² One of the storage buildings had climate control.

b. 3353 Keystone Drive (MB&F Investments, LLC)

This is the Subject Property in Case Nos. 20C 0721 and 21C 0770. MB&F Investments, LLC operated it as Milt's Mini Storage #2. It included 14 storage unit buildings.⁴³ One of the storage buildings had climate control.⁴⁴

c. 4550 F. Street (Personal Storage Center, LLC)

This is the Subject Property in Case No. 21C 0722. Personal Storage Center, LLC operated it as Milt's Mini Storage #4. It included 5 storage unit buildings.⁴⁵

⁴¹ *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

⁴² Exhibit 16:17.

⁴³ Exhibit 22:16.

⁴⁴ *Id.*

⁴⁵ Exhibit 32:17.

d. 10607 Bedford Ave. (Stellar, LLC)

This is the Subject Property in Case No. 21C 0723. Stellar, LLC operated it as Milt's Mini Storage #6. It included 10 storage unit buildings and one office/apartment building.⁴⁶

2. Assessments by the County Assessor

Keith Nielsen, an employee of the County Assessor, testified regarding the assessments made by the County Assessor for all four Subject Properties and for both tax years. Nielsen had been employed by the County Assessor for 23 years and had been assessing mini-storage properties since 2009. Nielsen explained he used the income approach to assess the Subject Properties.

The Income Approach is a “set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value.”⁴⁷ “In the income capitalization approach, an appraiser analyzes a property’s capacity to generate future benefits and capitalizes the income into an indication of present value.”⁴⁸ The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated operating expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield the value.⁴⁹ Capitalization rates can be estimates with various techniques.⁵⁰

In conducting an income approach for each property, Nielsen testified he collected data and then built a model for mini storage centers. He explained he had created two market areas for Douglas

⁴⁶ Exhibit 38:17.

⁴⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* 143 (“Income Capitalization Approach”) (4th ed. 2002).

⁴⁸ Appraisal Institute, *The Appraisal of Real Estate* 439 (14th ed. 2013).

⁴⁹ *Id.* at 460.

⁵⁰ *Id.* at 492-508.

County mini storage centers, with 204th Street running North and South as the dividing line. The Subject Properties were all located in the market area east of 204th Street. Nielsen also compared his results to sales.

Nielsen testified that typical rent in the market area was \$6.75 per square foot, and typical vacancy was three to six percent. He also testified that typical expenses were 40% to 55%, and the typical capitalization rate was six percent.

Rather than limiting the potential gross income figure to only the rentable space, Nielsen explained he used a gross square foot multiplier which included the square footage of hallways and other common areas. He also treated onsite office space or residential office space as amenities that added no additional value. Nielsen explained an apartment complex clubhouse would be assessed the same way. Nielsen also made adjustments for a few of the units that had climate control. In those instances, rent was \$7.50 per square foot, the vacancy rate was 10%, expenses were 50%, and the capitalization rate was 5.25%.

Nielsen made a note in the Property Record File indicating he was aware of the Appraisals done by Giff Property Services, Inc., but Nielsen had access only to “redacted” versions of the appraisals.⁵¹ It is also noted that Nielsen assessed the property at 3353 Keystone Drive (MB&F Investments, LLC) in Case Nos. 21C 0721 and 22C 0770 at the same value of \$6,823,600 for both tax years 2021 and 2022 and the County Board agreed with both of those values.

⁵¹ Exhibits 6:11, 8:13, 10:13, 12:7, and 14:11. In each property record file Nielsen’s note read respectively, “[a] redacted appraisal for [amount] was supplied to the BOE for 2021 by Giff Appraisals. Since none of the financial data was available to review, I was unable to determine whether the value was reasonable. Therefore, without access to the full appraisal, [*sic*] recommend no change for the 21 TERC case.”

3. Recommendation by Referee in Protest Proceeding

The referee under contract with the County Board⁵² also made a comment in his Referee Recommendation relating to the Giff Appraisals in several protests, stating that he did not have “enough time to determine if [the] appraisals are creditable.”⁵³ Because of the time limitation, the referee concluded in several protests, “I’m dismissing this protest because of that.”⁵⁴ In one protest, the referee took issue with the appraisal date of July 14, 2020.⁵⁵

4. Appraisals By Giff Property Services, Inc.

Martin Giff testified on behalf of the Taxpayers. Giff held a Certified General license with the Nebraska Real Estate Appraiser Board and therefore was licensed to appraise commercial properties.⁵⁶ Due to COVID-related restrictions and concerns, Giff’s inspections were drive-by inspections and were not internal inspections. However, Giff had previously inspected each property in 2016, and he declared related extraordinary assumptions per appraisal standards.⁵⁷

Giff prepared separate appraisal reports for each of the Subject Properties utilizing a sales comparison approach and an income approach.⁵⁸ When conducting his income approach analysis, Giff obtained historical income and expense information from the Taxpayers, as well as vacancy data. He also determined a capitalization rate. Giff accounted for storage units that had climate

⁵² The County Board may appoint a referee to conduct protest proceedings and make recommendations to the County Board under the authority of Neb. Rev. Stat. § 77-1502.01.

⁵³ Exhibits 1:2, 2:2, 4:2, and 5:2.

⁵⁴ *Id.*

⁵⁵ Exhibit 3:2.

⁵⁶ Giff has been licensed to perform commercial appraisals since 1992.

⁵⁷ Exhibit 16:9, Exhibit 22:9, Exhibit 32:9, and Exhibit 38:9. Giff declared an extraordinary assumption that “the improvements are of similar quality and condition on the date of value as observed during the drive-by inspection for the report and the complete inspection for a prior 2016 report.” The term “extraordinary assumption” is a term of art used by appraisers which indicates an assumption, “which, if found to be false, could alter the appraiser’s opinions or conclusions.” Appraisal Institute, *The Dictionary of Real Estate Appraisal* 106 (4th ed. 2002) (“Extraordinary Assumptions”).

⁵⁸ Exhibits 16, 22, 32, and 38.

control. He assigned no value to space that was not rentable (common areas, office space, management apartment space).

At the hearing, Giff asserted the appraisal reports were prepared in compliance with the Uniform Standards of Professional Appraisal Practice.⁵⁹ Giff also testified that more weight was given to the income approach.

Giff concluded the values of the Subject Properties were as follows:

Case No.	Address/Owner	Appraisal Exhibit No.	Effective Date	Opinion of value
21C 0720	3320 S. 60 th St. Cypress, LLC	Exhibit 16	December 31, 2020	\$3,300,000
21C 0721 and 22C 0770	3353 Keystone Dr. MB&F Investments, LLC	Exhibit 22	July 14, 2020	\$5,000,000
21C 0722	4550 F. St. Personal Storage Center, LLC	Exhibit 32	December 31, 2020	\$3,800,000
21C 0723	10607 Bedford Ave. Stellar, LLC	Exhibit 38	December 31, 2020	\$4,400,000

B. Analysis

As noted above, a presumption 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 is rebutted when there is competent evidence adduced on appeal to the contrary.⁶⁰ An appraisal report that is compliant with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) constitutes competent evidence to rebut that

⁵⁹ Exhibits 16:4, 22:4, 32:4, and 38:4.

⁶⁰ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

presumption.⁶¹ Since the Giff appraisals were prepared in compliance with USPAP, there is competent evidence rebutting the presumption in each of these five appeals.

Since the presumption has been rebutted, the reasonableness of the valuation fixed by the board of equalization is based upon all the evidence presented.⁶² The Commission gives great weight to the appraisals performed by Giff and therefore finds that Giff's appraisal opinions of value constitute clear and convincing evidence that the County Board determinations were arbitrary or unreasonable.

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 determinations. The Commission also finds that there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.⁶³

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Properties for tax years 2021 & 2022 in the captioned appeals are vacated and reversed.

⁶¹ *JQH La Vista Conf. Ctr. Dev. LLC v. Sarpy County Bd. of Equalization*, 285 Neb. 120, 125-126, 825 N.W.2d 447, 452-453 (2013) ("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.")

⁶² *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

⁶³ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding. In these appeals, the County Board's Referee did not have complete appraisals from Mr. Giff while the complete, unredacted appraisals were submitted to the Commission.

2. The assessed value of the Subject Property in Case No. 21C 0720 for tax year 2021 is **\$3,300,000**.
3. The assessed value of the Subject Property in Case No. 21C 0721 for tax year 2021 is **\$5,000,000**.
4. The assessed value of the Subject Property in Case No. 22C 0770 for tax year 2022 is **\$5,000,000**.
5. The assessed value of the Subject Property in Case No. 21C 0722 for tax year 2021 is **\$3,800,000**.
6. The assessed value of the Subject Property in Case No. 21C 0723 for tax year 2021 is **\$4,400,000**.
7. 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).
8. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
9. Each party is to bear its own costs in this proceeding.
10. This Decision and Order shall only be applicable to tax years 2021 and 2022.
11. This Decision and Order is effective for purposes of appeal on December 10, 2025.⁶⁴

Signed and Sealed: December 10, 2025

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁶⁴ 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.