

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

M & G PROPERTIES LLC,  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 21C 0797

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

CASE NOS: 21C 0798, 21C  
0799

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REVERSING THE DECISION  
OF THE DOUGLAS COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property are three improved commercial parcels in Douglas County, parcel number 0224590001, 0512240430, and 0512240432.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 21C 0797 at \$508,200, the Subject Property in Case No. 21C 0798 at \$396,000, and the Subject Property in Case No. 21C 0799 at \$401,200 for tax year 2021.
3. M & G Properties LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).

4. The County Board determined that the taxable value of the Subject Property in Case No. 21C 0797 at \$508,200, the Subject Property in Case No. 21C 0798 at \$364,400, and the Subject Property in Case No. 21C 0799 at \$369,200 for tax year 2021.
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 April 5, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Tim Cihacek was present at the hearing for the Taxpayer.
8. Micaela Larsen and Keith Nielsen with the County Assessor's Office (the County Appraisers) were 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

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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).

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>
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. At the hearing the Taxpayer stated that he wished to dismiss the appeals in Case No. 21C 0798 and 21C 0799, and he presented no further information regarding those appeals.
17. The Subject Property in Case No. 21C 0797 is a commercial parcel improved with three storage warehouse buildings constructed in 1945, 1982, and 1983.
18. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the

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<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<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).

characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to commercial properties in the area, including the Subject Property.

19. The Taxpayer alleged that the assessed value of the Subject Property should be lowered due to the distressed nature of the neighborhood.
20. The Taxpayer presented photographs of graffiti and broken windows on one of the three buildings located on the Subject Property as well as invoices for glass repair.
21. The Taxpayer also discussed and presented photographs of the abandoned and run down factory property adjacent to the Subject Property.
22. The County Appraisers stated that they were aware of the conditions in the neighborhood, and particularly of the abandoned and neglected factory property adjacent to the Subject Property and that their impact on value was captured in the sales in the Subject Property's economic area as applied in the neighborhood adjustment.
23. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on the rent received for the Subject Property.
24. 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.<sup>9</sup>

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

25. The Taxpayer did not present expense information for the Subject Property or any income or expense information for other properties.
26. The County Appraisers stated that based on a review of information regarding the characteristics of the Subject Property they believed that the quality rating of building three should be reduced resulting in a new 2021 opinion of value for the Subject Property of \$469,000, with \$338,300 allocated to the land and \$130,700 for the improvements.
27. The Commission finds that the assessed value of the Subject Property in Case No. 21C 0797 is \$469,000 for tax year 2021.
28. In Case No. 21C 0797 the Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
29. In Case No. 21C 0797 the Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decision of the County Board should be vacated.
30. In Case No. 21C 0798 and 21C 0799 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.
31. In Case No. 21C 0798 and 21C 0799 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 decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 21C 0797 is vacated and reversed.

2. The decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 21C 0798 and 21C 0799 are affirmed.

3. The taxable value of the Subject Property in Case No 21C 0797 is:

Land	\$338,300
<u>Improvements</u>	<u>\$130,700</u>
Total	\$469,000

4. The taxable value of the Subject Property in Case No 21C 0798 is:

Land	\$ 41,600
<u>Improvements</u>	<u>\$322,800</u>
Total	\$364,400

5. The taxable value of the Subject Property in Case No 21C 0797 is:

Land	\$ 42,000
<u>Improvements</u>	<u>\$327,700</u>
Total	\$369,200

6. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

8. Each party is to bear its own costs in this proceeding.

9. This Decision and Order shall only be applicable to tax year 2021.

10. This Decision and Order is effective on May 22, 2024.

Signed and Sealed: May 22, 2024



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Steven A. Keetle, Commissioner