BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

WESTERN TABOR RANCH APARTMENTS LLC, APPELLANT, V. LINCOLN COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 22C 0220 DECISION AND ORDER REVERSING THE DECISION OF THE LINCOLN COUNTY BOARD OF EQUALIZATION

For the Appellant: Kuldip Singh, Member	**For the Appellee:** Tyler J. Volkmer, Deputy Lincoln County Attorney

Thisappeal washeard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel consisting of six buildings containing 49 residential apartment units located in North Platte, Lincoln County, Nebraska. The legal description and Property Record File of the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Lincoln County Assessor (the County Assessor) determined the assessed value of the Subject Property was $3,725,244 for tax year 2022. Western Tabor Ranch Apartments LLC (the Taxpayer) protested this assessment to the Lincoln County Board of Equalization (the County Board) and requested a taxable value of $1,500,000. The

County Board determined the taxable value of the Subject Property for tax year 2022 was $3,725,244.[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 September 28, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-12 were admitted into evidence.

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, there are two burdens of proof.[3] 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.[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.[5]

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.[6] The burden

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[1] Exhibit 2.

[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] *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (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)).

[4] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (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).

[5] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

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

of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[7]

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.[8] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[9]

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[10] 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.[11]

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.[12] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[13] 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

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[7] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[8] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[9] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *Omaha Country Club v. Douglas County Bd. of Equal.,* 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[10] 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) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *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).
[11] *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)).
[12] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[13] *Id.*

evaluation of the evidence presented to it.[14] The Commission's Decision and Order shall include findings of fact and conclusions of law.[15]

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.[16]

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.[17] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[18] 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.[19] All real property in Nebraska subject to taxation shall be assessed as of January 1.[20] All taxable real property, with the exception of agricultural land and

[14] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[15] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[16] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[17] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[18] *Omaha Country Club v. Douglas County Bd. of Equal.,* 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).
[19] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[20] See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

horticultural land, shall be valued at actual value for purposes of taxation.[21]

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.[22] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[23] 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.[24] 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.[25] 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.[26] 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.[27] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[28]

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[21] Neb. Rev. Stat. § 77-201(1) (Reissue 2018).
[22] Neb. Const., art. VIII, § 1.
[23] *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
[24] *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).
[25] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[26] *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).
[27] *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).
[28] *Id.* at 673, 94 N.W.2d at 50.

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

1. Testimony of Kuldip Singh

Kuldip Singh, a Member of the Taxpayer, identified the Subject Property as being a Section 42 property.[29] He stated that he had not filed the mandatory statement of income and expenses with the Rent-Restricted Housing Projects Committee (the Committee) by July 1, 2021. After receiving an assessment notice from the County Assessor, he filed a protest with the County Board. After the protest hearing and upon receiving notice of the County Board determination of value, he filed this appeal with the Commission.

In preparation for this hearing, Singh provided an Income Statement to the County Assessor.[30] Singh testified to his belief that during the relevant time period the Subject Property had an effective gross income of $397,883 and a net operating income of $62,614.[31] He asserted the capitalization rate should be 6.3%.[32] Singh also provided property record file information for income-producing properties he asserted were comparable to the Subject Property.[33] However, he did not quantify any of the data relating to the alleged comparables relative to the actual value of the Subject Property.

Singh testified to his opinion of value of the Subject Property at $1.4 million to $1.5 million.

2. Testimony of Julie Stenger

Julie Stenger was the County Assessor for Lincoln County. She testified that since the required filings under 77-1333 were not made

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[29] See, 26 U.S.C. § 42 (2018).
[30] Exhibit 5:44.
[31] Singh testified these figures were from Exhibit 11, which he said was filed July 3, 2023, and which would not have been applicable to filings for tax year 2022.
[32] See, Exhibit 5:89. Singh's assertion was consistent with the capitalization rate determined by the Rent-Restricted Projects Valuation Committee for tax year 2022 per Neb. Rev. Stat. § 77-1333(6) (Reissue 2018).
[33] See, generally, Exhibits 7-10.

by July 1, 2021,[34] her office assessed the property using a cost approach. She testified that after reviewing actual income and actual expenses of the Subject Property that were provided in preparation for this hearing, she believed the appropriate assessed value to be $2,197,100.

3. Testimony of Charity Farley

Charity Farley had been a Lead Appraiser for the County Assessor for 20 years. She testified that when no statement of actual income and actual expenses was timely received by the County Assessor,[35] she proceeded to calculate the value of the Subject Property using the cost approach, resulting in a value determination of $3,725,244.[36]

Farley further testified that once the income and expense figures for the Subject Property were made available and reviewed, the County Assessor concluded the cost approach value was too high. Farley testified the income approach developed in preparation for this hearing indicated a value that was equalized with other low-income housing properties and resulted in a value of $2,197,100. Therefore, Farley stated her opinion that the appropriate value for the Subject Property for tax year 2022 was $2,197,100.

B. Analysis

Kuldip Singh, on behalf of the Taxpayer, an owner of a rent-restricted housing project, did not timely file the statement of actual income and actual expenses required by Neb. Rev. Stat. § 1333(5) by July 1, 2021. Such a filing would have disclosed actual income and actual expenses for calendar year 2020, as contemplated by Neb. Rev. Stat. § 1333(5) and would have been applicable to the assessed value of the Subject Property for tax year 2022.

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[34] See, Neb. Rev. Stat. § 77-1333(5) (Reissue 2018).
[35] If the Committee has received the report of income and expenses from the owner of the property, the Department of Revenue is then required to forward the report to the County Assessor of the applicable county by August 15. See, Neb. Rev. Stat. § 77-1333(5) (Reissue 2018).
[36] Exhibit 5:7.

Since that statement was not filed, it was permissible for the County Assessor to use another approved method to value the Subject Property. As authorized by Neb. Rev. Stat. § 1333(9), the County Assessor may then use, "any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112, so long as such method values the property as a rent-restricted housing project."[37] Being without the relevant income and expense data for the Subject Property for calendar year 2020, it was permissible and reasonable for the County Assessor to use the cost approach.[38] As noted above, that cost approach determined the assessed value of the Subject Property to be $3,725,244.[39]

After the Taxpayer's protest process was completed, and the County Board affirmed the value as assessed using the cost approach, and after the appeal was filed, income and expense information was provided to the County Board and the County Assessor by the Taxpayer. Once the income and expense data was made available, it was reasonable for the County Assessor to reconsider the appropriateness of using an income approach to compare with the cost approach estimate of value and to consider advising the County Board of those conclusions for purposes of this hearing.

The findings of the Legislature in relation to rent-restricted housing projects state a preference toward using an income approach to reach the "most accurate determination of the actual value of such projects."[40] Therefore, we find that once the County Assessor and

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[37] "Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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 section 77-1371, (2) income approach, and (3) cost approach." Neb. Rev. Stat. § 77-112 (Reissue 2018).

[38] The cost approach derives a value indication "by estimating the cost new as of the effective date of the appraisal to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive; deducting depreciation from the total cost; and adding the estimated land value." *Cost Approach*, *The Dictionary of Real Estate Appraisal* (7th ed. 2022).

[39] See Exhibit 5.

[40] Neb. Rev. Stat. § 77-1333(2)(d) (Reissue 2018). "Of all the professionally accepted mass appraisal methodologies, which include the sales comparison approach, the income approach,

County Board were made privy to the actual income and actual expense data of the Subject Property for the relevant time period, it was reasonable to compare an income approach calculation to the cost approach calculation. That is precisely what the County Assessor did when concluding, based on that new information, that the cost approach conclusion was too high and that the income approach calculation was more appropriate. We find that the income approach conclusion of value is persuasive evidence of the actual value of the Subject Property.

For the sake of completeness, we also note that there was no independent appraisal prepared or admitted in evidence in relation to the value of the Subject Property for the effective date of January 1, 2022.

We therefore find that the assessed value as determined by the County Assessor using an income approach as described above rebutted the presumption in favor of the initial value determined by the County Board using the cost approach and was clear and convincing evidence of the actual value of the Subject Property.

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 the County Board's decision was arbitrary or unreasonable.[41]

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

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and the cost approach, the utilization of the income-approach methodology results in the most accurate determination of the actual value of such projects."

[41] 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.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lincoln County Board of Equalization determining the taxable value of the Subject Property for tax year 2022 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2022 is:

Land	**$ 124,055**
Improvements	**$2,073,045**
Total	**$2,197,100**

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lincoln County Treasurer and the Lincoln 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 2022.
7. This Decision and Order is effective for purposes of appeal on November 16, 2026.[42]

Signed and Sealed: November 16, 2026

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

[42] 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.