

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

MONEY EXPRESS, INC.
APPELLANT,

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NO: 22C 0222

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

For the Appellant:

Kuldip Singh,
Pro Se

For the Appellee:

Kent A. Hadenfeldt,
Simmons Olsen Law Firm,
Special Dawes County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 64,469 square foot parcel improved with low-income housing units, located in the city of Chadron, Dawes County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 2.

II. PROCEDURAL HISTORY

The Dawes County Assessor determined the assessed value of the Subject Property was \$781,910 for tax year 2022.¹ Money Express, Inc. (the Taxpayer) protested this assessment to the Dawes County Board of Equalization (the County Board) and requested a taxable value of

¹ Exhibit 1.

\$408,020.² The County Board determined that the taxable value of the Subject Property for tax year 2022 was \$781,910.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 25, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference report, as ordered by the Commission. Exhibits 1 through 14 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁴ When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.⁵ 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.⁶ 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.⁷

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.⁸ The burden

² *Id.*

³ *Id.*

⁴ 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).

⁵ *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)).

⁶ *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).

⁷ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

⁸ *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.⁹

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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹² 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.¹³

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.¹⁴ The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁵ 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

⁹ *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.

¹⁰ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹¹ *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).

¹² 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).

¹³ *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)).

¹⁴ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁵ *Id.*

evaluation of the evidence presented to it.¹⁶ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁷

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.¹⁸

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.¹⁹ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²⁰ 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.²¹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²² All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²³

¹⁶ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁹ *Id.*

²⁰ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

²¹ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²² See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

²³ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

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.²⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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.²⁹ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³⁰

V. RENT-RESTRICTED HOUSING VALUATION UNDER Neb. Rev. Stat. § 77-1333.

Except as provided in Neb. Rev. Stat. § 77-1333(9) or (10), county assessors must value low-income housing projects that meet certain criteria, using an income approach utilizing the project's *actual* income

²⁴ Neb. Const., art. VIII, § 1.

²⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁶ *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).

²⁷ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁸ *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).

²⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

³⁰ *Id.* at 673, 94 N.W.2d at 50.

and *actual* expenses as provided each year to the Nebraska Department of Revenue.³¹ Additionally, a capitalization rate set by the Rent-Restricted Housing Projects Valuation Committee shall be used in this income approach.³²

To qualify for the assessment method prescribed by Neb. Rev. Stat. § 77-1333, the housing project must qualify under Section 42 of the Internal Revenue Code.³³ A planned low-income housing development in Nebraska may apply to the Nebraska Investment Finance Authority (NIFA) for certain tax credits. These applications are handled through a competitive process, with consideration given to the percentage of units that would be rent-restricted, amenities offered to residents, etc. Upon approval of the application, a land-use restriction agreement (LURA) is created. These LURAs are recorded and are enforceable against subsequent buyers for the life of the LURA, typically 30 to 45 years. These LURAs, as their names suggest, restrict project owners from engaging in certain land uses, such as raising rents on tenants outside of a specific range; or from refusing to rent to an otherwise-qualified tenant.

If a rent-restricted housing project owner fails to timely provide the required income and expense information to the Department of Revenue, the county assessor may use any professionally accepted mass appraisal method to value the housing project.³⁴

VI. FINDINGS OF FACT AND ANALYSIS

A. Testimony of Kuldip Singh

Kuldip Singh is an officer of Money Express Inc. Singh acknowledged the Subject Property is subject to a LURA with NIFA through approximately 2040, pursuant to tax credits issued to the previous owner under Section 42 of the Internal Revenue Code. The

³¹ Neb. Rev. Stat. § 77-1333(8) (Reissue 2018).

³² *Id.*

³³ See generally 26 U.S.C. § 42 (2020).

³⁴ Neb. Rev. Stat. § 77-1333(9) (Reissue 2018).

LURA itself was not provided in evidence. However, Singh provided a document from NIFA showing the Subject Property listed as a low-income housing project.³⁵ Singh testified he acquired the Subject Property through a foreclosure sale in 2017.³⁶

Singh argued the Nebraska Supreme Court's recent holding regarding one of Singh's other low-income housing projects³⁷ requires an assessor to value the Subject Property using the income approach method set forth in Neb. Rev. Stat. § 77-1333 because the Subject Property is also a low-income housing project. Singh also argued the Commission's previous decisions relating to his other low-income housing projects weigh in favor of requiring valuation of the Subject Property using the Neb. Rev. Stat. § 77-1333 methodology.

Singh admitted he did not know whether he filed the required 2020 income and expense information with the Nebraska Department of Revenue in 2021, for the valuation of the Subject Property for tax year 2022. However, Singh was sure he filed the required information for the previous two years.

B. Testimony of Lindy Coleman

Lindy Coleman had been the Dawes County Assessor for seventeen years and held the State Assessor Certificate. Coleman stated she was directly involved in the assessment of the Subject Property for 2022.

Coleman testified she used a computer-assisted mass appraisal (CAMA) system in valuing the Subject Property using the cost approach. Coleman stated she used the cost approach in valuing similar properties throughout Dawes County, and therefore the Subject Property's value was equalized with other properties in the same jurisdiction.

Coleman also stated she did not receive any documentation from the Nebraska Department of Revenue regarding the income and

³⁵ Exhibit 14:2 (listing the Subject Property is as "7-0439 Hillside Apts (Chadron Apts. D)").

³⁶ Exhibit 10.

³⁷ *Lincoln Cnty. Bd. of Equal. v. Western Tabor Ranch Apts., LLC*, 314 Neb. 582, 991 N.W.2d 889 (2023).

expenses of the Subject Property for use in valuing the Subject Property per the Neb. Rev. Stat. § 77-1333 income approach method. Because this information had not been received, Coleman stated she used the cost approach to value the Subject Property. She also stated depreciation figures were determined by the CAMA system using the Marshall & Swift costing tables loaded into that system.³⁸ Using this system, a physical and functional depreciation figure of 50% was utilized.

Coleman also testified her office contracts the inspections of commercial properties in Dawes County to Stanard Appraisal.

C. Testimony of Darrel Stanard

Darrel Stanard has been a licensed appraiser for approximately 30 years. At the time of the hearing, Stanard Appraisal was working with more than 50 counties in Nebraska, including Dawes County. Stanard stated his company did the inspection and field work, including measuring, photographing, and determining quality and condition ratings for properties. The data obtained was then provided to the County Assessor for use in assessing properties in the jurisdiction.

When assisting with an assessment, Stanard testified he considered all three statutorily-identified approaches to value – the cost approach, the sales comparison approach, and the income capitalization approach.³⁹ Regarding the Subject Property, Stanard testified he did not consider the three approaches to value, but rather supplied data to the County Assessor for use in the Assessor's cost approach valuation.

³⁸ Exhibit 2:2 (noting the 07/2019 version of Marshall & Swift costing tables were utilized).

³⁹ See Neb. Rev. Stat. § 77-112 (Reissue 2018).

Stanard testified he reviewed the Assessor's valuation and agreed with the Assessor's value.⁴⁰

VII. ANALYSIS

For an owner of a low-income housing property to receive a valuation using the method prescribed in Neb. Rev. Stat. § 77-1333, the owner:

...shall file a statement electronically... on or before July 1 of each year that details actual income and expense data for the prior year, a description of any land-use restrictions, a description of the terms of any mortgage loans, including the loan amount, interest rate, and amortization period, and such other information as the committee or the county assessor may require for purposes of this section.⁴¹

If this information is not timely filed, "the county assessor may 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."⁴²

In this case, Coleman testified she did not receive the required income and expense data from the Nebraska Department of Revenue. The Department of Revenue would have been required to provide that information to Coleman if the Department had received that information from the Taxpayer.⁴³ Further, Singh testified that he was

⁴⁰ Stanard is a licensed residential appraiser, credentialed to appraise residential property. See, Neb. Rev. Stat. § 76-2213. He is not a certified general appraiser, who would be credentialed to appraise commercial property. See, Neb. Rev. Stat. § 76-2207.20. A licensed residential appraiser doing assessment work for a County Assessor is exempted from the requirements of the Real Property Appraiser Act. Neb. Rev. Stat. § 76-2221(9). However, a licensed residential appraiser working for a County Board may be in violation of the Real Property Appraiser Act if an opinion of value is given outside the scope of the appraiser's credentials. Neb. Rev. Stat. § 76-2201, *et seq.* In this case, it is not clear that Stanard was credentialed to give an opinion of value of the Subject Property, which was a commercial property.

⁴¹ Neb. Rev. Stat. § 77-1333(5) (Reissue 2018).

⁴² Neb. Rev. Stat. § 77-1333(9) (Reissue 2018).

⁴³ Neb. Rev. Stat. § 77-1333(5) (Reissue 2018) ("The Department of Revenue... shall forward such statements on or before August 15 of each year to the county assessor of each county in which a rent-restricted housing project is located.").

unsure whether the required information was timely provided to the Department of Revenue as required. The Commission finds no evidence in the record demonstrating the required income and expense data was timely filed. Accordingly, the Commission finds it was reasonable for Coleman to use another professionally accepted mass appraisal method to value the Subject Property for tax year 2022.

Coleman selected the cost approach to value the Subject Property. The application of this approach to the 24-year-old Subject Property is not without concern, as the “cost approach is more reliable for newer structures of standard materials, design, and workmanship.”⁴⁴ Particularly, a depreciation estimation for a 24-year-old improvement is less reliable than if the building were newer. However, the Taxpayer did not provide any evidence to prove errors were made in the County Assessor’s square footage measurements or depreciation determination. Accordingly, the Commission finds the Assessor’s use of the cost approach to value the Subject Property was not arbitrary or unreasonable.

While the Taxpayer offered comparable properties, two of those properties were located in other jurisdictions,⁴⁵ with the third property being a single-family residence.⁴⁶ Accordingly, the Commission finds these properties are not comparable to the Subject Property. The Taxpayer did not present any other competent evidence to demonstrate the County Board’s reliance on the County Assessor’s selection of the cost approach, or the application of that approach, was arbitrary or unreasonable.

VIII. CONCLUSION

The Commission finds there is no competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The

⁴⁴ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

⁴⁵ See Exhibit 8; Exhibit 9.

⁴⁶ See Exhibit 4.

Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be affirmed.

IX. ORDER

IT IS ORDERED THAT:

1. The decision of the Dawes County Board of Equalization determining the taxable value of the Subject Property for tax year 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 58,020
<u>Improvements</u>	<u>\$ 723,890</u>
Total	\$ 781,910

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Dawes County Treasurer and the Dawes 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 May 28, 2026.⁴⁷

SIGNED AND SEALED: May 28, 2026.

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁴⁷ 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.