

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

LOVES TRAVEL STOPS &  
COUNTRY STORES INC.,  
APPELLANT,

V.

SARPY COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 22C 0356

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

**For the Appellant:**

Doug Ruge,  
Attorney at Law

**For the Appellee:**

Andrea Gosnold-Parker,  
Deputy Sarpy County Attorney

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

**I. THE SUBJECT PROPERTY**

The Subject Property is an 8.6-acre commercial parcel, improved with a 13,025 square foot travel store, located in Sarpy County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Sarpy County Assessor determined the assessed value of the Subject Property was \$6,778,852 for tax year 2022. Loves Travel Stops & Country Stores, Inc. (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested a taxable value of \$3,907,500.<sup>1</sup> The County Board determined the

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<sup>1</sup> Exhibit 3:2.

taxable value of the Subject Property for tax year 2022 was \$6,778,852.<sup>2</sup>

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 19, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. At the hearing, Exhibits 1-22 were admitted into evidence.

### III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>3</sup> 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.<sup>4</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 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>5</sup>

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order,

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<sup>2</sup> Exhibit 1.

<sup>3</sup> 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).

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

<sup>5</sup> *Id.*

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

The Taxpayer must introduce competent evidence of actual value of the Subject Property to successfully claim that the Subject Property is overvalued.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### IV. APPLICABLE 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,

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<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>8</sup> 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).

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

<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.<sup>13</sup>

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.<sup>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> 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.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

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.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same

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<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Neb. Const., art. VIII, § 1.

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

relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

## V. FINDINGS OF FACT

### A. Summary of the Evidence

The Subject Property is a 13,025 square foot travel store situated on 8.6 acres of land. Construction of the improvements on the Subject Property were completed during calendar year 2021. The Subject Property was constructed as a travel stop and country store. It includes a Quik Trip convenience store with a fuel station and a Wendys restaurant. The Subject Property is located near an Interstate

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<sup>21</sup> *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).

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

<sup>23</sup> *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).

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

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

80 exit. The parties did not dispute that this is a large property compared to similar properties in Sarpy County.

### **1. Testimony of Timothy Ederer**

Timothy Ederer, an employee of the Sarpy County Assessor (the Assessor), testified he had been the Senior Commercial Appraiser for Sarpy County for the last 5 years and has worked as a Commercial Appraiser for Sarpy County for 10 years. He also held the State Assessor Certificate.

Ederer testified he assessed the Subject Property in 2022 using a Market-Adjusted Cost Approach. For the market adjustment, he used a -140% economic depreciation based upon the comparable properties he had generated.<sup>26</sup> The comparable properties were all convenience stores,<sup>27</sup> while the Subject Property was a larger travel center. The comparable properties used were also much older than the Subject Property. The Assessor testified he used the Market-Adjusted Cost Approach to comply with statutory equalization requirements.

### **2. Testimony of Joseph Calvanico**

Joseph Calvanico had been a licensed appraiser since 1991. He held the Certified General credential<sup>28</sup> and the MAI designation from the Appraisal Institute. Calvanico considered all three approaches to value but opined the cost approach was most indicative of actual value. In his cost approach, Calvanico relied upon the costing tables from Marshal Valuation Services. Calvanico testified his appraisal report conclusion was based in part on his understanding that the building construction was completed during calendar year 2020, so he applied 5% depreciation to the improvement value as of January 1, 2022. This was inconsistent with the testimony of Timothy Ederer, as discussed below. When asked if the depreciation should be less than 5% if the improvement construction were not completed until calendar year 2021, Calvanico opined depreciation would still be 5%, since the

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<sup>26</sup> See, Exhibit 3:18.

<sup>27</sup> E7-E10

<sup>28</sup> See, Neb. Rev. Stat. § 76-2207.20 (Reissue 2018).

improvement being constructed would have experienced the weather conditions of the winter of 2020-2021.

Calvanico also testified as to why he disagreed with the Assessor's value. He highlighted that some of the comparable properties the Assessor had used included personal property or were lease fee sales. Calvanico testified the taxpayer had included fuel canopies in their personal property return, which Ederer included as real property in the assessment. Calvanico also asserted he had used the more current costing tables from the Marshal Valuation Service than the Assessor had used.

## VI. ANALYSIS

Ederer's assessed value for the Subject Property was significantly increased due to his decision to apply an economic depreciation rate of -140%. While he opined this was appropriate based on comparable properties, the Commission is not persuaded this depreciation rate was reasonable.<sup>29</sup> Ederer's approach utilized six sales.<sup>30</sup> All six sales were of properties that were older than the Subject Property, ranging in terms of year built from 1988 to 2016.<sup>31</sup> Ederer asserted the -140% depreciation properly accounted for market adjustments relating to these sales. Calvanico disagreed.

Regarding the issue of depreciation, Ederer testified inspections indicated the improvement construction was not completed until the early part of calendar 2021. Therefore, the Subject Property was not yet one year old as of the effective date of January 1, 2022.

The Commission agrees with Calvanico's Appraisal conclusions, except for the depreciation rate used. While Calvanico testified the 5% depreciation rate was still appropriate even if the building age was less than one year old on January 1, 2022, we disagree. Since the age of the

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<sup>29</sup> Simply put, this negative depreciation rate resulted in a 40% increase in the assessed value.

<sup>30</sup> Exhibit 7:1.

<sup>31</sup> *Id.*

building was less than one year, the Commission finds the depreciation rate should be 0%.

Calvanico stated the improvement replacement cost new (RCN) at \$2,479,780.<sup>32</sup> Since the Subject Property had no depreciation as of the effective date, Replacement Cost New Less Depreciation (RCNLD) would also be \$2,479,780. Calvanico concluded the value of the land as though vacant, or site value, was \$1,555,000.<sup>33</sup>

Calvanico's appraisal constitutes competent evidence to rebut the presumption in favor of the determination of the County Board.<sup>34</sup> We conclude the conclusion of value stated in the Calvanico appraisal, except for the allocation for depreciation, constitutes clear and convincing evidence that the determination of the County Board was arbitrary or unreasonable.

## VII. CONCLUSION

The Commission finds 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 there is clear and convincing evidence the County Board's decision was arbitrary or unreasonable.<sup>35</sup>

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

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<sup>32</sup> Exhibit 16:43. Ederer's RCN was determined to be \$2,434,284 as shown at Exhibit 3:18.

<sup>33</sup> Exhibit 16:40. Ederer had determined the land component value at \$936,988 as shown at Exhibit 1.

<sup>34</sup> *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

<sup>35</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. For 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.



**VIII. ORDER**

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the 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:

<b>Land</b>	<b>\$ 1,555,000</b>
<b><u>Improvements</u></b>	<b><u>\$ 2,479,780</u></b>
<b>Total</b>	<b>\$ 4,034,780</b>

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy 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 December 5, 2023.<sup>36</sup>

Signed and Sealed: December 5, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>36</sup> 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.