

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

CAROL J. LANG,  
APPELLANT,

CASE NO: 22C 0789

V.

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

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Douglas County, parcel number 0124050002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$662,600 for tax year 2022.
3. Carol J. Lang (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$662,600 for tax year 2022.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 16, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Carol Lang, Rod Lang, and Monte Bowman were present at the hearing for the Taxpayer.
8. Keith Nielsen with the County Assessor's Office (the County Appraiser) was 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 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>

---

<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).

<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).

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. The Subject Property is an industrial parcel improved with an 8,180 square foot storage warehouse constructed in 1959. The Subject Property has quality and condition ratings of average.
17. The Taxpayer's representative alleged that the land values were being manipulated to avoid notice of valuation change requirements.
18. The overall value of the Subject Property changed from the prior assessment year requiring a notice of valuation change be provided to the property owner.<sup>9</sup>
19. Taxpayer did not allege that a failure to receive a notice of valuation change prevented them from filing a protest or appeal of the assessed value of the Subject Property.
20. The assessed value for real property may be different from year to year according to the circumstances.<sup>10</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>11</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>12</sup>

---

<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).

<sup>9</sup> Neb. Rev. Stat. § 77-1315 (Reissue 2018).

<sup>10</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>11</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>12</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>13</sup>
22. “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>
23. The Property Record Files (PRF) presented show that the Subject Property and the county’s comparable properties were all valued using the income approach to valuation, a methodology specifically allowed by statute.
24. The County Appraiser stated that in using the income approach to value, the County Assessor is determining the total value of a property. Once the total valuation has been determined a portion of that value is allocated to the land component and a portion is allocated to the improvements.
25. “[A] tax on land and a building or other improvement is a single and indivisible tax, even if the building or improvement is assessed separately from the land.”<sup>15</sup> The issue before the Commission is the *total* property assessment; values inappropriately allocated are at most a mere irregularity because there is no effect on the tax that will be levied.<sup>16</sup>
26. The Taxpayers representative alleged that the assessed value of the Subject Property was not equalized with two other comparable properties.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>17</sup>
28. The Taxpayer did not present the PRF for the two properties alleged to be equalization comparables. Accordingly, the

---

<sup>13</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

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

<sup>15</sup> *Phelps Cty. v. Anderson*, 2 Neb. App. 236, 238, 508 N.W.2d 314, 316 (1993).

<sup>16</sup> See Neb. Rev. Stat. § 77-1853, 1854 (Reissue 2018); see also Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>17</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

- Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayer's table to the Subject Property.<sup>18</sup>
29. The Commission cannot find that the two properties alleged by the Taxpayer to be equalization comparables are comparable to the Subject Property.
  30. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
  31. The Taxpayer alleged that the assessed value of the Subject Property was higher than its actual value.
  32. The Taxpayer presented an appraisal report valuing the Subject Property as of October 12, 2022, which was certified as being performed according to professional appraisal standards (the Taxpayer's Appraisal).
  33. 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.<sup>19</sup>
  34. The commission finds and determines that the Taxpayer's Appraisal constitutes competent evidence concerning the value of the Subject Property and that the presumption in favor of the County Board's determination is rebutted.<sup>20</sup>

---

<sup>18</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 1, 2023, includes the following:

**NOTE:** *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

<sup>19</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>20</sup> *Id.*

35. The County Appraiser stated that he reviewed the Taxpayer's Appraisal but that he felt the comparable sales presented by the County Board were superior to the comparable used in the Appraisal Report due to the differences in size, condition, and use from the Subject Property, and that the expenses utilized in the appraisal report were higher than typical expenses, particularly for the usual triple net lease.
36. The County Board presented the PRF for the Subject Property. The PRF contains information about the 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 each of the storage warehouse properties in the area, including the Subject Property.
37. The County Board presented a CoStar report prepared for the Subject Property containing property analytics, underwriting, and construction information for the Subject Property.
38. The County Board presented a table listing information for six properties as comparables to the Subject Property, along with the PRF for each. Four of the properties had sold near the assessment date and three sold within the three-year sales window used by the County Assessor for the 2022 assessments.
39. The County Appraiser discussed the storage warehouse market in Douglas County. The County Appraiser stated that the storage warehouse market, of which the Subject Property is a part, was a substantially hot market and he was having difficulty keeping the assessed values up with the sales occurring in the county as demonstrated by the information regarding all qualified sales that occurred in the economic area of the Subject Property.
40. Both the Taxpayer's Appraisal and the PRF for the Subject Property contain an income approach to valuation.

41. The income information and capitalization rates used in both the Taxpayer's Appraisal and the PRF are generally consistent with the CoStar report as well as each other.
42. The expense rate used in the Appraisal Report is significantly higher than the expense rate utilized in the PRF. The Taxpayer's Appraisal includes expenses that it states in its narrative portion are atypical for the usual triple net leases including taxes, property insurance, common area maintenance, and management fees.
43. The Taxpayer's Appraisal contain a sales comparison approach to value performed for the Subject Property.
44. The Taxpayer's Appraisal uses seven properties as comparable sales and makes sales comparison adjustments to the sales prices to account for differences between the Subject Property and the sales.
45. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value."<sup>21</sup>
46. Four of the seven sales utilized in the Taxpayer's appraisal occurred during the sales period utilized by the County Assessor for the 2022 tax year valuation determinations, and three appear on the list of valid storage warehouse sales.
47. The sales offered as comparable sales by the County Board to support its determination of value while unadjusted are similar to the Subject Property in quality, condition and size.
48. 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.
49. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

---

<sup>21</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

unreasonable and the decision 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 for tax year 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 60,500
<u>Improvements</u>	<u>\$602,100</u>
Total	\$662,600

3. 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).
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 on December 20, 2024.

Signed and Sealed: December 20, 2024



\_\_\_\_\_  
Steven A. Keetle, Commissioner