BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

HAVCO FAMILY TRUST, APPELLANT, V. LANCASTER COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 22C 0834 DECISION AND ORDER AFFIRMING THE DECISION OF THE LANCASTER COUNTY BOARD OF EQUALIZATION

For the Appellant: Kenneth Cook, Trustee	**For the Appellee:** Daniel J. Zieg, Deputy Lancaster 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 commercial parcel consisting of 40 condominium units built in 1981 and located at 1821 Ridge Haven Court in Lincoln, Lancaster County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 4.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (the County Assessor) determined the assessed value of the Subject Property was $2,918,400 for tax year 2022. Havco Family Trust (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board). The

County Board determined the taxable value of the Subject Property for tax year 2022 was $2,918,400.[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 7, 2023. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1-6 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 1.

[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 Phillip Hughes

Hughes was an employee of the County Assessor and testified on behalf of the County Board. He testified he was directly involved in determining the assessed value of the Subject Property for the County Assessor.

Hughes testified he conducted an exterior inspection of the Subject Property in February or March of 2022. He did not have permission to conduct an interior inspection. Based on that inspection, Hughes testified, he changed both the quality and the condition ratings for the improvements as compared to the prior year.

The County Assessor considered both the cost approach[29] and the income approach.[30] Hughes testified that since he had income and expense data for hundreds of income-producing properties in the same market area as the Subject Property to determine what was typical in the market, he relied upon the income approach to value the Subject Property.

The income approach developed by the County Assessor using data of what was typical in the market, found that the annual income for the Subject Property would be expected to be $336,000, and the vacancy and collection loss rate would be five percent, resulting in an effective gross income (EGI) of $319,200. From the EGI, typical expenses of $114,912 were subtracted, resulting in a net operating income (NOI) of $204,288. The NOI was then divided by the typical or market capitalization rate of seven percent, resulting in an estimated value of $2,918,400.[31] Hughes testified as to his opinion that this value

[29] Exhibit 4:4.
[30] Exhibit 4:9.
[31] See the County Assessor's income approach data and calculation at Exhibit 4:9.

determination, as adopted by the County Board, was the appropriate valuation of the Subject Property for tax tear 2022.

2. Testimony of Kenneth Cook

Cook was the Trustee of the Taxpayer. He testified to his use of an income approach that was based upon the actual income, vacancy, and expenses of the Subject Property. Cook testified the actual NOI of the Subject Property was $116,668 as compared to the $204,288 that the County Assessor determined was typical in the market.

Cook's income approach did not analyze any market comparables to determine what would be typical for income, vacancy, expense, or a cap rate, nor did he testify that he verified or confirmed that his income approach was consistent with typical figures. Cook gave an opinion of value of the Subject Property of $1,710,806.

B. Analysis

A determination of actual value may be made by using professionally accepted mass appraisal methods.[32] The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.[33] "In general, for income-producing properties, the income approach is the preferred valuation approach when reliable income and expense data are available, along with well-supported income multipliers, overall rates, and required rates of return on investment."[34]

The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated operating expenses to

[32] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[33] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[34] International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield the value.[35]

Hughes' testimony indicated the assessment conducted by the County Assessor was consistent both with the steps outlined above and with the statutory requirements. We find the income approach utilized by the County Assessor and adopted by the County Board in determining the actual value of the Subject Property was not unreasonable.

The income approach utilized by the Taxpayer and described by Cook did not analyze any market comparables to determine what would be typical for income, vacancy, or expenses. "Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties)."[36] Cook testified that he did not verify or confirm that his income approach figures were consistent with typical figures.[37] We therefore cannot conclude that Cook's income approach calculations or opinion of value were clear and convincing evidence that the determination of actual value by the County Board was arbitrary or unreasonable.

VI. CONCLUSION

The Commission finds that there is not 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 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.

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[35] Appraisal Institute, The Appraisal of Real Estate 432, 460 (15th ed. 2020).
[36] International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).
[37] Pinnacle Enters., Inc. v. Sarpy Cnty, Bd. of Equalization, 320 Neb. 303, 313-314 (2025).

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster 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	**$220,000**
Improvements	**$2,698,400**
Total	**$2,918,400**

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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. This Decision and Order shall only be applicable to tax year 2022.
6. This Decision and Order is effective for purposes of appeal on November 4, 2026.[38]

Signed and Sealed: November 4, 2026

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

[38] 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.