

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

S. ABDULHAMID SHAIKH
APPELLANT,

CASE NO: 23C 0091

V.

BOONE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Boone County, parcel number 0004935.00.
2. The Boone County Assessor (the County Assessor) assessed the Subject Property at \$592,845 for tax year 2023.
3. S. Abdulhamid Shaikh (the Taxpayer) protested this value to the Boone County Board of Equalization (the County Board) and requested an assessed value of \$17,405 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$592,845 for tax year 2023.
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 October 10, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Abdulhamid Shaikh was present at the hearing for the Taxpayer.
8. Dan Lueken (Assessor) and Darrel Stanard (Appraiser) were 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."³ 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."⁴
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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

² 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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a three-story, multi-family apartment complex with 24 one-bedroom units, built in 1977 with 18,436 square feet (SF) above grade, quality of average (2), and a condition of average (3).
17. According to the Deed and Use Agreement riders provided by the Taxpayer, the Subject Property was acquired through a foreclosure bid process while it was a part of Housing and Urban Development's (HUD) Section 8 Housing Affordability Program. The project's program restricts renting to only low-income tenants at or above age 62, that qualify for HUD's Section 8 Housing Assistance Payment program (HAP) which enables HUD to subsidize tenant rent payments while also restricting the owner's targeted tenant pool (above age 62), tenant income amounts (at 80% or below of the area's median income adjusted for family size), and allowable rent amount of 30% of the 80% median income amount. The Subject Property at the time of purchase by the Taxpayer was extended 20 years from the purchase date of January 31, 2011, in the Section 8 program deeming the program active as of the January 1, 2023, assessment date.
18. The Taxpayer attested that the Subject Property valuation is arbitrary and unreasonable due to the financial restrictions of

⁷ *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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the property tenants and the absence of HUD subsidized payments due to an unintentional violation of the HUD agreement.

19. The Taxpayer provided an email from Maria Provost with CMS that indicated to the Taxpayer's staff member in May 2022 that HUD had abated payments to the project due to lack of HUD approved property management.
20. The Taxpayer stated that the management company was not located in Albion, NE where the property is located, and discontinued their management of the property due to company logistics.
21. The Taxpayer stated that in order for HUD to reinstate the subsidized payments, a HUD approved property manager must be employed by the project. Due to the location of the property and lack of HUD certified management individuals or companies in Boone County, the Taxpayer has been unsuccessful in finding appropriately trained and approved management. Coincidentally, subsidized payments have not been made to the Taxpayer from HUD since what appears to be April 2022 based on the email from Provost.
22. The Taxpayer opined that Neb. Rev. Stat. § 77-1333 should be considered in the assessment of the Subject Property. This statute directly relates to Section 42 rent-restricted housing and in plain language does not imply **all** types of rent-restricted properties and therefore, would not apply to the Section 8 rent-restricted Subject Property's valuation methodology in this instance.
23. The Appraiser stated that an interior inspection of the property was not possible, but conversations were conducted with an employee of the property to determine coefficients for an income approach to value. The employee provided rent rolls from 2022 and 2023 which the Appraiser used to establish potential gross income at \$615 per unit with a 35% vacancy and collection loss. The Appraiser then used a 50% expense rate with a 10% loaded

capitalization rate, both attested to be based on typical data from the local market for rental properties.

24. The Assessor stated that he has been in his role for approximately two years, and it was unknown that the property was enrolled in the Section 8 housing program prior to the hearing. The provided Property Record File (PRF) for the Subject Property noted the property as being a part of Section 42 housing but it was unclear to the Assessor why, or how long, that notation had been included on the property record.
25. The Assessor stated that there are no other Section 8 rent-restricted properties in the County for comparison purposes.
26. The Taxpayer attested that the property requires HUD approved management in order to comply with the Section 8 housing agreement, without which, the property's rental income will not be subsidized by HUD and the property's effective gross income is negatively affected as only the tenant responsibility amounts may be collected for monthly rent.
27. The Commission finds it reasonable to use actual potential gross income and expense amounts as submitted by the Taxpayer, as the Subject Property is the only Section 8 project in Albion, NE with use restrictions that ultimately affect net operating income and value.
28. The Taxpayer provided a profit and loss statement for review by the Commission with income based on 2023 at \$615 per rental unit, actual collection and loss at 30%, as well as expenses of \$109,487.
29. The Taxpayer attested that the project consistently has had approximately eight vacant units each year.
30. For the January 1, 2023, value, the Commission will look to the submitted May 2022 rent roll rental amounts of \$600 per rental unit, and collection and loss of 33% based on testimony of the Taxpayer consistently having eight vacant units. Further submissions by the Taxpayer show 2022 total expenses of \$109,487, which includes property tax expense at \$2,789 that

shall be removed from expenses and accounted for in the capitalization rate. This application results in a total expense amount of \$106,698 without respect to any HUD subsidized payment loss.

31. The Appraiser stated that a loaded capitalization rate of 10% was used to value the Subject Property. The Taxpayer agreed with the rate presented. Loaded capitalization rate means that the higher capitalization rate will account for the removal of the property tax expense from the total expense amount.
32. Based on the submitted numbers, the Commission finds the Income Approach coefficients using actual numbers as follows:

PGI	\$172,800
C/L	(\$ 57,024)
<u>Laundry</u>	<u>\$ 1,170</u>
EGI	\$116,946
<u>EXP</u>	<u>(\$106,698)</u>
NOI	\$10,248 ⁹

33. The Commission finds that use of the actual PGI of the Subject Property should be used rather than the actual income received in the absence of the HUD subsidized payments, as this is a situation that can be rectified, albeit with some difficulty, and would otherwise result in a negative NOI, which would not be indicative of actual value. It should be noted that it is unclear by the documents provided what the actual income received for the entire year of 2022 was prior to the abatement of the HUD payments.

⁹ PGI = Potential Gross Income of \$600 x 24units x 12months = \$172,800
 C/L = Collection and Loss of 8 vacant units / 24 total units = 33% vacancy \$172,800*.33 = \$57,024
 EGI = Effective Gross Income (\$172,800-\$57,024+\$1,170) = \$116,946
 EXP = Actual Operating expenses as provided by the Profit and Loss statement said to be based on 2022
 NOI = Net Operating Income to be used in Income Approach to Value calculation of NOI / Capitalization rate = Value. \$10,248 / .10 = \$102,480

34. 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.
35. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

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 2023 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 17,405
<u>Improvements</u>	<u>\$ 85,075</u>
Total	\$102,480

3. This Decision and Order, if no further action is taken, shall be certified to the Boone County Treasurer and the Boone 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 2023.
7. This Decision and Order is effective on November 15, 2024.

Signed and Sealed: November 15, 2024



Jackie S. Russell, Commissioner