

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

UNIVERSITY POINTE, LLC,
APPELLANT,

CASE NO: 23C 1156

V.

**DECISION AND ORDER
REVERSING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION**

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

For the Appellant:

Brian Morrissey,
Cline Williams Wright
Johnson & Oldfather, LLP

For the Appellee:

Daniel J. Zieg
Deputy Lancaster County Attorney

This appeal was heard before Commissioners Steven Keetle & Jackie Russell. Commissioner Keetle presided.

I. THE SUBJECT PROPERTY

The Subject Property is a .69-acre commercial parcel located in Lancaster County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 6.

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined that the assessed value of the Subject Property was \$2,866,500 for tax year 2023. University Pointe, LLC (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2023 was \$2,866,500.

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 30, 2024. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission.

III. STANDARD OF REVIEW

The Commission’s review of the County Board’s determination is de novo.¹ 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.²

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.³

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.⁴ Proof that the order, decision, determination, or action was

¹ 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).

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

³ *Id.*

⁴ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

unreasonable or arbitrary must be made by clear and convincing evidence.⁵

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁶ 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.⁷

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.⁸ 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.⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

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

⁵ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁶ 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).

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

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

⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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.¹¹

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.¹² Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

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.¹⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ 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

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁵ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

¹⁷ Neb. Const., art. VIII, § 1.

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

a disproportionate part of the tax.¹⁹ 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.²⁰ 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.²¹ 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.²² There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²³

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

At the July 30, 2024, hearing on this matter, the parties have agreed on the record that the valuation set by the County Board was arbitrary and unreasonable, and to stipulate to a new value for the Subject Property.

VI. CONCLUSION

Based upon the stipulation of the parties, the Commission finds that 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

¹⁹ *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).

²⁰ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²¹ *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).

²² *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²³ *Id.* at 673, 94 N.W.2d at 50.

finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2023 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2023 is:

Land	\$ 299,200
<u>Improvements</u>	<u>\$ 2,313,700</u>
Total	\$ 2,612,900

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.
6. This Decision and Order shall only be applicable to tax year 2023.

7. This Decision and Order is effective for purposes of appeal on August 5, 2024.²⁴

Signed and Sealed: August 5, 2024

SEAL



Steven A. Keetle, Commissioner

Jackie S. Russell, Commissioner

²⁴ 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.