

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Omaha Business Park, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos:

15C 0457 & 17C 0339,
15C 0458, 16C 0170 & 17C 0340,
15C 0459, 16C 0161 & 17C 0341,
15C 0460, 16C 0162 & 17C 0342,
15C 0462, 16C 0169 & 17C 0344,
15C 0463, 16C 0168 & 17C 0345,
15C 0464, 16C 0167 & 17C 0346,
15C 0465, 16C 0166 & 17C 0347,
15C 0468, 16C 0163 & 17C 0350,
17C 0343 & 17C 0348

Decision and Order Vacating and Reversing
the Decision of the Douglas County Board
of Equalization

For the Appellant:

James F. Cann,
Koley Jessen, PC, LLC

For the Appellee:

Shakil A. Malik,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property consists of nine commercial parcels for tax year 2015, eight commercial parcels for tax year 2016 and eleven commercial parcels for tax year 2017 located in Douglas County.¹ These parcels are improved with a storage warehouse/office building approximately 1,000,000 square feet in size, a 50,000 square foot storage warehouse/mechanical building, and various smaller buildings and other improvements. The legal descriptions and Property Record Cards for the parcels that make up the Subject Property are found at Exhibits 37-72.

¹ The parties dismissed or settled some of the parcels that made up the Subject Property in prior or subsequent tax years, which resulted in different numbers of parcels in the Subject Property from year to year.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined the assessed value of the Subject Property for tax years 2015, 2016 & 2017 as shown on the following chart. Omaha Business Park, LLC (the Taxpayer) protested these assessments to the Douglas County Board of Equalization (the County Board) and requested values as shown on the following chart. The Douglas County Board determined taxable values for tax year 2015, 2016 and 2017 as shown on the chart below.²

Case No.	Assessor	Taxpayer	County Board
15C 0457 ³	\$135,400	\$135,400	\$135,400
15C 0458 ⁴	\$650,000	\$650,000	\$650,000
15C 0459 ⁵	\$12,556,900	\$2,459,400	\$12,556,900
15C 0460 ⁶	\$113,400	\$113,400	\$113,400
15C 0462 ⁷	\$209,000	\$209,000	\$209,000
15C 0463 ⁸	\$211,400	\$211,400	\$211,400
15C 0464 ⁹	\$158,800	\$158,800	\$158,800
15C 0465 ¹⁰	\$360,000	\$360,000	\$360,000
15C 0468 ¹¹	\$546,900	\$546,900	\$546,900
16C 0170 ¹²	\$582,900	\$311,000	\$582,900
16C 0161 ¹³	\$12,894,000	\$7,000,000	\$12,894,000
16C 0162 ¹⁴	\$521,500	\$113,400	\$521,500
16C 0169 ¹⁵	\$336,300	\$209,000	\$336,300
16C 0168 ¹⁶	\$340,200	\$211,400	\$340,200

² The appeals were not filed in the same parcel order from one year to the next, the order of the case numbers on this chart is an attempt to order the parcels in the same way from year to year. See Exhibit 1-72.

³ E1,E37:13

⁴ E3,E39:15

⁵ E6,E42:31

⁶ E9,E45:13

⁷ E15,E51:13

⁸ E18,E54:13

⁹ E21,E57:13

¹⁰ E24,E60:17

¹¹ E33,E69:13

¹² E4,E40:14

¹³ E7,E43:30

¹⁴ E10,E46:17

¹⁵ E16,E52:17

¹⁶ E19,E55:17

Case No.	Assessor	Taxpayer	County Board
16C 0167 ¹⁷	\$355,700	\$158,800	\$355,700
16C 0166 ¹⁸	\$498,700	\$274,400	\$498,700
16C 0163 ¹⁹	\$2,324,300	\$546,900	\$2,324,300
17C 0339 ²⁰	\$578,100	\$55,600	\$578,100
17C 0340 ²¹	\$792,200	\$311,000	\$792,200
17C 0341 ²²	\$12,894,000	\$7,000,000	\$12,894,000
17C 0342 ²³	\$271,100	\$113,400	\$271,100
17C 0344 ²⁴	\$499,500	\$209,000	\$499,500
17C 0345 ²⁵	\$505,300	\$211,400	\$505,300
17C 0346 ²⁶	\$381,100	\$158,800	\$381,100
17C 0347 ²⁷	\$847,600	\$274,400	\$847,600
17C 0350 ²⁸	\$1,435,600	\$546,900	\$1,435,600
17C 0343 ²⁹	\$318,700	\$133,300	\$318,700
17C 0348 ³⁰	\$287,100	\$120,100	\$287,100

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged Exhibits 1 through 94; Exhibits 95 and 96 were exchanged just prior to the hearing and admitted without objection. The Commission held a hearing on January 16, 2018.

¹⁷ E22,E58:17

¹⁸ E25,E61:18

¹⁹ E34,E70:15

²⁰ E2, E38:10

²¹ E5,E41:13

²² E8,E44:30

²³ E11:E47:10

²⁴ E17,E53:10

²⁵ E20,E56:10

²⁶ E23,E59:10

²⁷ E26,E62:18

²⁸ E35,E71:12

²⁹ E14,E50:10

³⁰ E29,E65:9

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³¹ 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."³²

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.³³

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.³⁴ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.³⁵

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.³⁶ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.³⁷

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

³¹ See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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 (2009).

³² *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

³³ *Id.*

³⁴ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

³⁵ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

³⁶ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. Of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

³⁷ *Bottof v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”³⁸ The commission may also “take notice of judicially cognizable facts and in addition 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.”³⁹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁴⁰

IV. VALUATION

A. 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.⁴¹

“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 section 77-1371, (2) income approach, and (3) cost approach.”⁴² “Actual value, market value, and fair market value mean exactly the same thing.”⁴³ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.⁴⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁴⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁴⁶

³⁸ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

³⁹ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

⁴⁰ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁴¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

⁴² *Id.*

⁴³ *Omaha Country Club v. Douglas Cty. Bd. of Equal., et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁴⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

⁴⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

⁴⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

The Taxpayer presented an appraisal report prepared by Jim Vershoor, an appraiser with Tri-State Appraisal services, which contained determinations of value for the Subject Property for tax years 2015, 2016 and 2017 (Taxpayer's Appraisal).⁴⁷ The Appraisal report is certified as being performed according to, and prepared in conformity with, professional standards.⁴⁸ The Nebraska Supreme Court has held that 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 to overcome the presumption in favor of the determination of the County Board.⁴⁹ The presumption having been rebutted, the question of whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence, with the burden of proof resting on the taxpayer.⁵⁰

The Subject Property consists of multiple parcels of property owned by Omaha Business Park, LLC (the Taxpayer), which is in turn owned by an entity that buys and "recycles" large industrial and commercial properties into multi-tenant uses. In 2011 the Taxpayer purchased the parcels that make up the Subject Property, along with other parcels that are not part of these appeals,⁵¹ surrounding a large industrial building that had been used as part of a manufacturing operation. The Taxpayer has worked to convert the large industrial building (Main Building) to multi-tenant uses including warehouse and office space. The Taxpayer has also leased or attempted to lease portions of some or all of the smaller buildings located on the parcels surrounding the Main Building.

The Taxpayer offered the testimony of William Johnson, the property manager for the Subject Property since 2013, and Robert Hassler with IRG Realty Advisors, the management arm of an industrial property ownership and management firm, both of whom had inspected the Subject Property and were familiar with its condition and characteristics.

⁴⁷ E:73

⁴⁸ E73:146

⁴⁹ *JQH La Vista Conference Center Development LLC v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

⁵⁰ *Id.*

⁵¹ Including an adjacent office building that was not appealed and parcels of unimproved land which were appealed but dismissed for some of the tax years.

Three parcels which are part of the Subject Property have improvements with assessed value for tax years 2015, 2016 and 2017. The first is the Main Building, which has close to one million square feet of warehouse and office space.⁵² The Main Building has three different interior ceiling heights, with both high bay (high height) and low bay (medium height) warehouse space divided by unfinished peripheral (low height) space that surrounds the low bay warehouse space and has been finished into office space along outer portions of the main building. While these different sections were built at the same time, the roof of the Main Building leaks in various areas, particularly where the different ceiling heights come together. The Taxpayer's witnesses also testified that the low ceiling height areas running around and through the higher ceiling areas limit the ability to fully utilize the high bay and low bay space as a storage warehouse. The Taxpayer's witnesses testified that the number of loading docks was low for the amount of warehouse space in the Main Building but that environmental contamination of portions of the Subject Property prevented the construction of additional docks without significant remediation work. Repairs to the roof were underway with \$845,000 being spent on roof repairs in 2016, and additional work necessary in the future with a current estimate of just under two million dollars of work necessary. The largest portion of the Main Building is leased for use as a storage warehouse. The south end of the main building has office finish, and some of it is being leased for use as office space.

The second improved parcel contains a mechanical building and central plant building. The mechanical and central plant buildings were originally built to supply power, heating, and cooling to the entire campus, including buildings located on adjacent parcels not under appeal. The evidence before the Commission is that, while the Taxpayer is moving the Subject Property away from the central plant model, the emergency power and power transfer equipment is still connected to, and functions as a part of, the Main Building. Additionally, the central plant building contains water chillers and fire pumps that service the Main Building as well as other adjacent parcels not under appeal. This second improved parcel also contains a building known as the trades building. This trades building has a wood block floor, which is not desirable for most uses. It is currently occupied by a lawn service and cabinet shop. There was evidence of significant deferred maintenance and roof repairs required for these buildings.

⁵² Case No. 15C 459, 16C 161, 17C 241.

The third improved parcel contains above ground oil tanks, an oil pumping station, water tower, cooling tower, electrical switch gear and electrical feeders. The above ground oil tanks are no longer in use and the water tower was decommissioned sometime prior to 2013. The cooling tower is connected to the main building and provides HVAC to portions of the main building. The electrical switch gear and electrical feeders are where the power from the utility is received and distributed to the improvements on all of the parcels of the Subject Property.

In addition to these three improved parcels, the Subject Property is also made up of parcels that are: green space adjacent to the main building; a lot used for trailer storage and tenant parking; lots containing a rail spur onto the Subject Property; and lots containing green space and a walking trail as well as a chemical retention system and monitoring wells to contain chemical contamination on these parcels and other portions of the Subject Property.

Keith Nielsen of the Douglas County Assessor/Register of Deeds Office testified regarding the valuation of the Subject Property by the County. Mr. Nielsen had inspected the Subject Property several times and had been involved with determining the assessed values of the Subject Property. Mr. Nielsen testified that the County determined the assessed values of each parcel of the Subject Property individually and not as part of a larger group of interrelated properties. For tax year 2015 the County utilized an income approach to value model with which Mr. Nielsen was unfamiliar. However, for some of the parcels the 2015 Property Record Files indicate that the value was simply an allocation of a 2011 sale price rather than a determination of value made using a professionally accepted method of valuation.⁵³ For tax year 2016 the county developed a new income model to value industrial properties using new data collected by Mr. Nielsen. That same basic model was then carried forward into tax year 2017, adjusting for new sales and market information. Mr. Nielsen indicated that data on rents, vacancies, and expenses for commercial and industrial properties has been hard to get for the last 2-3 years as property owners and managers have been unwilling to share the relevant information with the Assessor's Office. Mr. Nielsen testified that the County wasn't aware of the environmental contamination issues that were present on the Subject Property or the full extent of the deferred maintenance or repairs necessary to the roofs of the buildings on the Subject Property.

⁵³ See, E39:4.

Mr. Nielsen indicated that the County applied a range of values to industrial properties in Douglas County to determine the value of the Subject Property, while the Taxpayer's Appraisal reviewed the Subject Property specifically. The County also valued each parcel of the Subject Property as a separate individual parcel, while the Taxpayer's Appraisal determined that due to the interconnectedness of the parcels, the value of the Subject Property should be determined as a whole and then allocated among the parcels for valuation purposes.

Mr. Nielsen testified that based on the new information regarding the condition and quality of the Subject Property, as well as the environmental issues, he would assess the Subject Property differently. With the information available to him at the hearing, Mr. Nielsen testified that he was unable to determine what his opinion of value for the Subject Property would be for tax years 2015, 2016 and 2017, but he estimated that it would be at least a couple of million dollars decrease in valuation. The County Board was also unaware of the environmental contamination, the full extent of deferred maintenance, and the condition of the roofs of the Subject Property and therefore did not consider their impact on its value. A determination of value made without considering these factors is unreasonable and arbitrary.

The Taxpayer's Appraisal determined the value of the Subject Property as a single unit for each of the three tax years and then allocated the value between the individual tax parcels that make up the Subject Property.⁵⁴ Because of the interconnectedness of systems on the Subject Property, such as backup generators, water chillers, and electrical relays, as well as parking and green space located on parcels separate from, yet necessary for, the use of the Main Building, this methodology makes sense. The Commission notes as well that while the County Board alleges that it cannot use this approach, the County Board's individual parcel valuations for tax years 2016 and 2017 vary significantly from year to year while the value of the whole Subject Property is substantially the same from year to year. The Taxpayer's Appraisal indicates that the significant deferred maintenance, necessary roof repairs, and environmental contamination were considered when determining the value of the Subject Property for each of the tax years at issue.

⁵⁴E73:144-145

Based on all of the evidence presented the Commission finds and determines that the actual value of all of the parcels that make up the Subject Property for tax years 2015, 2016 and 2017 are those values determined by the Taxpayer's Appraisal.⁵⁵

V. CONCLUSION

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 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 decisions of the County Board are vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2015, 2016 and 2017 are vacated and reversed.⁵⁶
2. The taxable values of the Subject Property for tax years 2015 2016 and 2017 are:

Case No.	Value
15C 0457	\$495,000
15C 0458	\$535,000
15C 0459	\$4,645,000
15C 0460	\$65,000
15C 0462	\$115,000
15C 0463	\$120,000
15C 0464	\$325,000
15C 0465	\$100,000
15C 0468	\$1,075,000

⁵⁵ E73:144-145.

⁵⁶ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the 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.

Case No.	Value
16C 0170	\$545,000
16C 0161	\$6,530,000
16C 0162	\$70,000
16C 0169	\$125,000
16C 0168	\$125,000
16C 0167	\$330,000
16C 0166	\$105,000
16C 0163	\$1,110,000
17C 0339	\$515,000
17C 0340	\$555,000
17C 0341	\$9,450,000
17C 0342	\$70,000
17C 0344	\$125,000
17C 0345	\$125,000
17C 0346	\$335,000
17C 0347	\$110,000
17C 0350	\$1,130,000
17C 0343	\$285,000
17C 0348	\$170,000

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 2015, 2016 and 2017, respectively.

7. This Decision and Order is effective for purposes of appeal on October 3, 2018.⁵⁷

Signed and Sealed: October 3, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

⁵⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.