

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

Cheema Investments, LLC,  
Appellant,

v.

Box Butte County Board of Equalization,  
Appellee.

Case No: 17C 0027

Decision and Order Affirming the Decision  
of the  
Box Butte County Board of Equalization

**For the Appellant:**  
Kuldip Singh, Member  
*Pro se*

**For the Appellee:**  
Travis Rodak,  
Box Butte County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located in Box Butte County. The parcel is improved with a 51,200 square foot apartment building.<sup>1</sup> The legal description and property record card for the Subject Property are found at Exhibit 3.

**II. PROCEDURAL HISTORY**

The Box Butte County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$635,703 for tax year 2017. Cheema Investments, LLC (the Taxpayer) protested this assessment to the Box Butte County Board of Equalization (the County Board) and requested an assessed valuation of \$500,000. The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$635,703.<sup>2</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held hearings in three separate appeals concerning the same parties, including 17C 0027, on September 10, 2018. On that date, the Commission established a common record for the purpose of explaining the rules and procedure

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<sup>1</sup> The apartment complex is commonly known as the Tower Apartments.

<sup>2</sup> Ex 1.

for the hearings. The Commission proceeded to conduct an individual hearing for each of the three parcels. Exhibits 1 through 3 were admitted without objection in Case No. 17C 0027.<sup>3</sup> Additionally, the parties stipulated that all testimonial evidence offered in Case No. 17R 0017 should also be received and considered in 17C 0027. Kuldip Singh, a member of Cheema Investments, LLC, and Michelle Robinson, the County Assessor, testified in both 17C 0027 and 17R 0017.

### STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>4</sup> 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.<sup>5</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>6</sup>

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>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

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<sup>3</sup> The exhibits were not received from the parties until the date of the hearing, and had not been fully marked at the time of the hearing. The page numbers referenced in this order were added after the hearing and will be maintained in the Commission's official record of the proceedings.

<sup>4</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 (2009).

<sup>5</sup> *Brenner* at 283, 811.

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> The commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>12</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

### III. VALUATION & EQUALIZATION

#### 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.<sup>14</sup>

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.<sup>15</sup> Actual value, market value, and fair market value mean exactly the same thing.<sup>16</sup> Taxable value is the percentage of actual value

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<sup>9</sup> 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).

<sup>10</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

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

<sup>15</sup> *Id.*

<sup>16</sup> *Omaha Country Club* at 180, 829.

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

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.<sup>20</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>24</sup>

## **B. Facts & Analysis**

On May 25, 2018, the Commission issued an Order for Hearing in this appeal. This order contained the following paragraph:

11. **REQUIRED EVIDENCE Each party shall provide as an exhibit:**
  - a. Copies of the County's Property Record File for any parcel a party will assert is a comparable parcel.

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<sup>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>18</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>20</sup> *Neb. Const.*, Art. VIII, §1.

<sup>21</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>22</sup> *Equitable Life v. Lincoln Cty. 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).

<sup>23</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>24</sup> *Id.* at 673, 94 N.W.2d at 50.

**NOTE:** *A screen shot or print out of a 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>25</sup>

The Commission includes this requirement, and the explanatory note, because the property record file contains detailed information about the qualities and characteristics of the property, its valuation history, and the valuation methodology used by the County Assessor. This information is essential to determine whether properties are comparable for valuation and equalization purposes.

Despite this directive in the order for hearing, the Taxpayer presented only printed copies of web pages as documentary evidence of the valuation of allegedly comparable properties. Having reviewed these exhibits, we find that they do not contain the information necessary to determine whether the properties alleged to be comparable were in fact comparable.

Kuldip Singh, a member of Cheema Investments, LLC, testified that the Subject Property had several disadvantages that reduced its market value. The Subject Property was designed as an assisted living facility. As a result, all of the units are single bedroom apartments, and the building operates on a single electric meter, which effectively requires the units to be rented on a utilities-paid basis. Additionally, the landlord is required to manage and maintain internal temperatures in the hallways and common areas. Mr. Singh opined that people in the community do not wish to reside in a five-story building. However, the Taxpayer did not produce any quantifiable evidence of the effect of these conditions on the market value of the property. The Taxpayer also provided no competent evidence to support its requested value of \$500,000.

Michelle Robinson, the County Assessor, testified that she made modifications to her methodology for valuing apartment buildings throughout the county for tax year 2017 to bring valuation for the subclass within the acceptable statutory range of a 92% to 100% assessed-to-sale ratio.<sup>26</sup> According to Ms. Robinson's testimony, this change to methodology caused valuations for some parcels to increase and for others to decrease, but the subclass as a whole was brought into the acceptable statutory range. The sales examined by the County Assessor in

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<sup>25</sup> See *Order to Vacate Single Commissioner Designation and Order Amended Order for Hearing and Notice of Hearing*, Case File.

<sup>26</sup> See Neb. Rev. Stat. § 77-5023(2) (Reissue 2018).

reassessing commercial apartment buildings for tax year 2017 did not include any properties that were similar to the Subject Property; the largest apartment building sold contained 20 units as compared to the Subject Property's 62 units.

As noted above, appeals of this type begin with a presumption that the value determination by the County Board is correct. The Taxpayer has produced evidence of certain negative characteristics and conditions of the Subject Property which could potentially decrease its market value, but it has not provided any meaningful way for the Commission to measure what impact, if any, these characteristics and conditions have on its market value. Similarly, the Taxpayer has produced evidence that other apartment buildings in the county are assessed at different per square foot rates than the Subject Property, but it has not produced competent evidence that any of these buildings are comparable to the Subject Property in terms of their quality and characteristics.<sup>27</sup> The evidence presented by the Taxpayer is insufficient to allow the Commission to meaningfully evaluate its claims about the actual value of the Subject Property and the equalization of that value with similar properties in the jurisdiction.

#### **IV. 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 all of the reasons set forth above, the appeal of the Taxpayer is denied.

#### **V. ORDER**

IT IS ORDERED THAT:

1. The decision of the Box Butte County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

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<sup>27</sup> In Case No. 17R 0017, we found that the record contained evidence that the property in issue was not equalized with another comparable property. None of the properties proposed as comparables in that case are actually comparable to the Subject Property due to differences in size and other physical characteristics.

Land	\$ 24,653
<u>Improvements</u>	<u>\$611,050</u>
Total	\$635,703

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Box Butte County Treasurer and the Box Butte 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 2017.
7. This Decision and Order is effective for purposes of appeal on April 29, 2019.<sup>28</sup>

Signed and Sealed: April 29, 2019

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

<sup>28</sup> 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.