

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

Global Hospitality LLC  
Appellant,

v.

Douglas County Board of Equalization  
Appellee

Case No: 09C-506

Order Affirming the Determination  
of the Douglas County  
Board of Equalization

**For the Appellant:**  
Anup Singh,  
Managing Member, Global Hospitality LLC

**For the Appellee:**  
Thomas Barrett  
Deputy Douglas County Attorney

Heard before Commissioners Hotz and Salmon

**I. THE SUBJECT PROPERTY**

The Subject Property is an 112,309 square foot commercial parcel, improved with a 56,448 square foot hotel with 131 rooms, located at 10728 L Street, Omaha, Nebraska. The legal description of the parcel is found at Exhibit 2:4. The property record card for the subject property is found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor determined that the assessed value of the subject property was \$4,578,600 for tax year 2009. (E1). Global Hospitality LLC (Taxpayer) protested this assessment to the Douglas County Board of Equalization (County Board) and requested an assessed valuation of \$2,700,000. (E4). The County Board determined that the assessed value for tax year 2009 was \$4,578,600. (E1).

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. The Commission held a hearing on November 23, 2011.

### III. STANDARD OF REVIEW

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

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.

*Id.* 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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *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. Cf. *Josten-Wilbert Vault Co. v. Board of Equalization 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 Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value) . 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

#### IV. VALUATION

##### A. Law

Under Nebraska law,

[a]ctual 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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). 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. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in [Nebraska] subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

##### B. Summary of the Evidence

Arshpreet Singh, a Managing Member of the Taxpayer, testified the subject property is a four-story hotel with 129 guest rooms, located near 108<sup>th</sup> & L Streets in Omaha. Singh said the hotel was built in 1986 and was originally operated as a Hampton Inn. The Taxpayer purchased

the subject property on February 7, 2007, by warranty deed, at a purchase price of \$4,600,000. E2:4.

Both the County Board and the Taxpayer utilized the income approach to determine the market value of the subject property. The Income Approach can be defined as, “a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value.” *The Dictionary of Real Estate Appraisal*, Fourth Edition, Appraisal Institute, p.143, (2002). 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 expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield indicated value. See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2008, 466.

Singh testified regarding the actual income and expenses of the subject property using profit and loss statements for 2007 and 2008. He said the average daily room rate was \$72.42 with an occupancy rate of 53.9%. Singh also testified that actual expenses were \$103,431, including \$27,452 for property taxes.

The County Assessor estimated actual value of the parcel at \$4,578,595 using the income approach. E2:11. The Assessor based this estimated value on a room rental rate of \$86.50 per day for 131 rooms, vacancy & collection losses of 50%, expenses of 70%, and a loaded capitalization rate<sup>1</sup> of 13.55% ( $\$86.50 \times 131 \times 365 \times .5 \times .3 / .1355 = \$4,578,595$ ). E2:11-12.

The income approach to valuation supports two basic methodologies: direct capitalization<sup>2</sup> and yield capitalization.<sup>3</sup> Both of these methods “require a comprehensive study of historical income and expenses for the subject property. This study is combined with an analysis of typical income and expense levels for comparable properties. A reconstructed operating statement is [then] developed for the subject property.” *The Appraisal of Real Estate*, 13<sup>th</sup> Edition, The

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<sup>1</sup> A “loaded” capitalization rate includes the effective tax rate. In this case, the unloaded capitalization rate was 11.55% and the effective tax rate was 2%, resulting in a loaded capitalization rate of 13.55%.

<sup>2</sup> The direct capitalization method produces an indication of value based on a single year’s estimated income. See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2001, at 465.

<sup>3</sup> A yield capitalization method requires an analysis of income and expected returns over multiple years. See, *Id.*

Appraisal Institute, 2001, at 465. “Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed.” *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 318.

Since the hotel was not purchased by the Taxpayer until February 7, 2007, the Taxpayer appeared to rely upon actual income and expense data from that date forward.<sup>4</sup> As a result, the Taxpayer would not have been able to conduct a “comprehensive study of historical income and expenses for the subject property” due to its relatively short operating history. Further, the Taxpayer provided no evidence indicating typical income or expenses for any comparable properties. Any “reconstructed operating statement” that may have otherwise been developed would have been significantly limited for use in the income approach.

## V. EQUALIZATION

### A. Law

“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 this Constitution.” *Neb. Const.*, Art. VIII, §1. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991). 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. *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). Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property. See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999). 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. *Banner*

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<sup>4</sup> The actual operating history of a subject property can be considered for appraisal purposes. *The Appraisal of Real Estate 12th Edition*, The Appraisal Institute, 2001, pp. 509 - 511.

*County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987). 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. *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987). The constitutional requirement of uniformity in taxation extends to both rate and valuation. *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964). If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity. *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d 47 (1959).

### **B. Summary of the Evidence**

The County Board provided evidence of three comparable commercial parcels. E2. The income approach was used to value each comparable parcel using a 50% vacancy rate and a 70% expense rate, as was used with the subject property. E2:17, 22, 26. For one comparable parcel, a capitalization rate of 13.55% was used, as was used with the subject property. E2:17. For two comparables, a lower capitalization rate of 12.80% was used, which resulted in a higher estimate of value for those two comparables.<sup>5</sup>

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

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<sup>5</sup> Since the net operating income is divided by the capitalization rate in the income approach, a lower capitalization rate results in a higher estimate of value.

**VII. ORDER**

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the value of the subject property for tax year 2009 is Affirmed.
2. The Assessed value of the Subject property for tax year 2009 is:

Land	\$ 526,700
Improvement	<u>\$4,051.900</u>
Total	\$4,578,600

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 (2011 Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on January 18, 2012.

Signed and Sealed: January 18, 2012.

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Commissioner Robert W. Hotz

SEAL

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Commissioner Nancy J. Salmon

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.