

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Midwest Neuroscience Center,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case Nos: 10C-531 & 11C-647

Decision and Order Affirming the
Determinations of the Douglas County
Board of Equalization

For the Appellant:

Thomas Barrett,
Attorney at Law

For the Appellee:

Matthew J. Boever,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 31,448 square foot medical office building built in 2000 and remodeled in 2009, which is located at 8005 Farnam Street, Omaha, Douglas County, Nebraska. The legal description of the parcel is found at Exhibit 3, page 6. The property record cards for the Subject Property are found at Exhibits 3 and 8.

II. PROCEDURAL HISTORY

For tax year 2010, the Douglas County Assessor determined that the assessed value of the Subject Property was \$3,888,500.¹ Midwest Neuroscience Center (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a valuation of \$2,508,786.² The Douglas County Board determined that the taxable value for tax year 2010 was \$3,459,300.³

¹ E1:1. This included an assessment of the contribution to value of the land of \$1,070,000, and a contribution to value of the improvement of \$2,818,500.

² E5:1.

³ E1:1. The County Board determination included a contribution to value of the land of \$1,070,000, and a contribution to value of the improvement of \$2,389,300.

For tax year 2011, the Douglas County Assessor determined that the assessed value of the Subject Property was \$4,700,500.⁴ Midwest Neuroscience Center (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a valuation of \$3,589,575.⁵ The Douglas County Board determined that the taxable value for tax year 2011 was \$4,700,500.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged 16 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. The Commission held a consolidated hearing on November 21, 2012.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁷ 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."⁸

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.⁹

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

⁴ E2:1. This included an assessment of the contribution to value of the land of \$1,070,000, and a contribution to value of the improvement of \$3,630,500.

⁵ E6:1.

⁶ E2:1. The County Board determination included a contribution to value of the land of \$1,070,000, and a contribution to value of the improvement of \$3,630,500.

⁷ See, Neb. Rev. Stat. §77-5016(8) (2012 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).

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *Id.*

arbitrary.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹² 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.¹³

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.”¹⁴ 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.”¹⁵

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.¹⁶

“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.”¹⁷ “Actual value, market value, and fair

¹⁰ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

¹² 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).

¹³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁴ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁷ *Id.*

market value mean exactly the same thing.”¹⁸ 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.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

B. Summary of the Evidence

The Taxpayer argued that the Subject Property was overvalued when assessed as a medical office building. The Taxpayer asserted the Subject Property should have been assessed as an office building, not as a medical office building.

John Dunn, a full-time employee of the Taxpayer, testified that the Subject Property was located less than two blocks from Omaha hospitals. He testified that the finish was “extremely nice.” Dunn explained that the Subject Property was built into a hill, and consequently the lower floors had limited windows, half of the first floor was occupied by a parking garage, and only the third floor had windows on all sides.

Dunn further testified that the Subject Property had six tenant spaces, and that on January 1, 2011, 4,000 square feet, or approximately 13% of the Subject Property, was vacant. He attributed that vacancy rate to poor management, and testified that the former property management company had been dismissed. He testified that the 13% vacancy rate was higher than it should have been due to poor management.

Dunn testified that there were no surgery suites in the Subject Property, but that the tenant mix included only medical practices. He stated that none of the tenant spaces were used as surgical centers as of January 1, 2010 or January 1, 2011.

The Taxpayer asserted a proprietary interest to the Subject Property’s rent rolls as its reason for being unwilling to disclose them when they were requested by the Assessor.

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

The Taxpayer called Greg Weisheipl to testify. Weisheipl was the Senior Commercial Property Appraisal Manager for the Assessor since 2010. He was also a licensed General Certified appraiser. Weisheipl testified that the Subject Property was assessed for both tax years using a direct capitalization income approach.

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. This conversion can be accomplished in two ways. One year's income expectancy can be capitalized at a market-derived rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate.²²

The direct capitalization method produces an indication of value based on a single year's estimated income.²³ When using the income approach with direct capitalization, the steps are 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.²⁴

A variety of techniques may be used to quantify various components of any application of the approach.²⁵

The Assessor inspected the Subject Property on December 1, 2009.²⁶ Weisheipl testified that for purposes of mass appraisal for tax year 2010, the Assessor grouped medical buildings and office buildings together. The Assessor's income approach worksheet for tax year 2010 is found at Exhibit 3, page 17, and indicates: (1) a market rental rate of \$21.50 per square foot; (2) a vacancy and collection loss rate of 5%; (3) an expense rate of 30%; (4) an unloaded capitalization rate of 10%;²⁷ and (5) an income approach indicated value of \$3,930,100.²⁸

²² The Dictionary of Real Estate Appraisal, Fourth Edition, Appraisal Institute, p.143, (2002).

²³ See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2001, at 465.

²⁴ See, *The Appraisal of Real Estate*, 13th Edition, The Appraisal Institute, 2008, at 466.

²⁵ *Id.* at chs 20-24.

²⁶ E3:19.

²⁷ E3:17-18. An unloaded capitalization rate does not include the effective tax rate, which is included in the expenses.

²⁸ See also, E3:2. It was not explained why the Assessor gave a "reconciled" and "final indicated value" of \$3,888,500 when only the income approach was utilized in the assessment.

Weisheipl explained that the income worksheet was based on a full-service model, rather than a triple-net lease model.

At the Protest proceeding before the County Board for tax year 2010, the Assessor recommended that the County Board adopt an actual value of \$3,459,000;²⁹ the same value as agreed to in a Stipulation that later resolved an appeal to the Commission for tax year 2009.³⁰

For tax year 2010, the Commission finds that the Taxpayer offered no persuasive evidence to quantify the market value of the Subject Property. The County Board determined the actual value for 2010 based upon the recommendation of the Assessor, which was the same as the value agreed to by the parties in a Stipulation for tax year 2009. The assessed value for real property may be different from year to year, dependent upon the circumstances.³¹ While a prior year's assessment is not relevant to the subsequent year's valuation,³² in this appeal, the County Board determination was not simply based upon the amount of the prior year's assessment, but was based, at least in part, on the Assessor's recommendation regarding market value for tax year 2010, and was the same value that the parties agreed to in the Stipulation for tax year 2009.

For tax year 2011, Weisheipl testified that the Assessor developed a new market area comprised only of medical office buildings, and separated medical office buildings from office buildings for purposes of mass appraisal. Weisheipl testified that the Subject Property's superior interior finish, including more plumbing than most office buildings, tenant mix, which included medical practices only, and location, about two blocks from hospitals, attributed to the Subject Property being assessed as a medical office building rather than as an office building. He stated that for a number of reasons medical office buildings tended to have higher market values than office buildings.

Weisheipl testified that the Assessor valued the Subject Property for tax year 2011 using the income approach, and arrived at an actual value of \$4,700,500.³³ The Assessor's Income Worksheet is found at Exhibit 4, page 16, and indicates: (1) a market rental rate of \$16 per

²⁹ E3:9.

³⁰ E3:20. The stipulation for tax year 2009 did not result in a Confession of Judgment with the Commission until after the Protest proceeding for 2010.

³¹ See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

³² See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

³³ See also, E4:16.

square foot; (2) a vacancy and collection loss rate of 5%; (3) an expense rate of 10%; and (4) an unloaded cap rate of 8%.³⁴ Weisheipl explained that the income worksheet was based on a triple-net lease model.

The County Board relied upon the Assessor's determination of value derived from the income approach for tax year 2011.³⁵ For tax year 2011, the Taxpayer provided no evidence to quantify that the market value of the Subject Property should be less than the value determined by the County Board.

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.”³⁶ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.³⁷ 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.³⁸ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.³⁹ 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.⁴⁰ 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.⁴¹ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴² If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation

³⁴ E4:16. An unloaded capitalization rate does not include the effective tax rate, which is included in the expenses.

³⁵ The Assessor gave a “reconciled” and “final indicated value” of \$4,700,500. E4:18.

³⁶ *Neb. Const.*, Art. VIII, §1.

³⁷ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁸ *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).

³⁹ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

⁴⁰ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴¹ *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).

⁴² *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

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 [sic].”⁴³ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁴

B. Summary of the Evidence

The Taxpayer asserted that the Subject Property was not equalized with similar properties for tax years 2010 and 2011. The Taxpayer asserted that the parcel most comparable to the Subject Property was located at 9202 West Dodge Road (9202 W. Dodge), Omaha, Nebraska.⁴⁵ The improvement at 9202 W. Dodge was occupied with medical offices, was constructed in 1980, and was assessed in both tax years with a “Very Good” quality rating.⁴⁶ More than 11,000 square feet of the basement of the property at 9202 W. Dodge was assessed as being finished.⁴⁷

For tax year 2010, the Assessor valued both the Subject Property and the property at 9202 W. Dodge as office buildings occupied with medical offices.⁴⁸ For tax year 2011, the Assessor valued the Subject Property as a medical office building and the property at 9202 W. Dodge as an office building.⁴⁹

When making a uniformity comparison between the property at 9202 W. Dodge to the Subject Property, the Commission notes that based upon the property record cards, there appear to be at least two significant differences between the properties that should be considered for purposes of equalization analysis: (1) the effective age; and (2) the condition rating.

⁴³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁴ *Id.* at 673, 94 N.W.2d at 50.

⁴⁵ The property record cards for this parcel are found at E3:25-28 for tax year 2010 and E9 for tax year 2011. According to the Income Worksheets for both tax years 2010 and 2011, the income approach for the property at 9202 W. Dodge indicated: (1) a market rental rate of \$21 per square foot; (2) a vacancy and collection loss rate of 10%; (3) an expense rate of 44%; and (4) an unloaded capitalization rate of 7.75%.

⁴⁶ E3:26, E9:2. The Subject Property was assessed with a “Good” quality rating for tax year 2010, and “Very Good” for tax year 2011. E3:7, E4:7.

⁴⁷ E3:26, E9:2.

⁴⁸ This is designated in the property record cards as “Nbhd,” (neighborhood), “OFC,” (office), and with an occupancy description of Medical Offices. Compare E3:7 (Subject Property) with E3:26 (9202 W. Dodge). On the Income Worksheets for 2010, the Subject Property was identified with Occupancy Code 341, Medical Offices, E3:17, and the property at 9202 W. Dodge is identified with Occupancy Code 344, Office Building, E3:27. This difference is explained by Weisheipl’s testimony above that for purposes of mass appraisal for tax year 2010, the Assessor grouped medical buildings and office buildings together.

⁴⁹ On the Income Worksheets for 2011, the Subject Property was identified with Occupancy Code 341, Medical Offices, E4:16, and the property at 9202 W. Dodge is identified with Occupancy Code 344, Office Building, E9:7.

First, The Subject Property was built in 2000 and remodeled in 2009, with an effective age of 10 years.⁵⁰ In contrast, the property at 9202 W. Dodge was built in 1980 and had not been remodeled, with an effective age of 32 years.⁵¹ The Taxpayer provided no evidence to prove that the property at 9202 W. Dodge was more similar to the Subject Property in terms of age than what is shown in the property record cards, an effective age difference of 22 years.

The other significant difference between the Subject Property and the property at 9202 W. Dodge is the condition of the two properties. For both tax years, the Subject Property was assessed with a condition rating of good.⁵² For both tax years, the property at 9202 W. Dodge was assessed with a condition rating of average.⁵³ Again, the Taxpayer provided no evidence to prove that the property at 9202 W. Dodge was more similar to the Subject Property in terms of condition than what is indicated in the property record cards,⁵⁴ nor did the Taxpayer provide any evidence to quantify the differences between the good condition rating of the Subject Property with the average condition rating of the property at 9202 W. Dodge as it relates to the market value of the Subject Property.

The Commission notes that it appears the property at 9202 W. Dodge may not have been included in the 2011 reappraisal, when the Assessor developed a new market area comprised only of medical office buildings, and separated medical office buildings from office buildings for purposes of mass appraisal.⁵⁵ However, this does not appear to alter the analysis above.

The Taxpayer has not established by clear and convincing evidence that the property at 9202 W. Dodge is “similar” property for purposes of the uniformity clause⁵⁶ of the Nebraska Constitution.

⁵⁰ E3:7, E4:7. In the 2011 property record card, the Assessor indicated an effective age of the Subject Property of 10 years after the remodel. E4:7.

⁵¹ E3:26, E9:2. In the 2011 property record card, the Assessor indicated an effective age of the property at 9202 W. Dodge of 32 years. E9:2.

⁵² E3:7, E4:7.

⁵³ E3:26, E9:2.

⁵⁴ “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.” Appraising Residential Properties, 4th Ed., Appraisal Institute, (2007) at pg. 334.

⁵⁵ This is suggested by the fact that the Income Worksheets for the alleged comparable property are exactly the same for both tax years, E3:27 and E9:7, indicating that the model created for 2011 was not applied to the assessment of the alleged comparable property.

⁵⁶ *Neb. Const.*, Art. VIII, §1.

The Commission has made a similar review of all of the alleged comparable properties provided by the Taxpayer,⁵⁷ examining the effective age, quality, condition, and size of each. The Commission finds significant differences between the Subject Property and each alleged comparable property. We find that none of the alleged comparable properties are “similar” to the Subject Property for purposes of equalization analysis.

Having failed to establish that the alleged comparable properties are “similar” to the Subject Property for purposes of the requirements of the uniformity clause, it is unnecessary to analyze whether the valuations placed on the Subject Property when compared to similar properties are “grossly excessive and [are] the result of systematic will or failure of a plain legal duty, and not mere error of judgment.”⁵⁸

The Taxpayer provided no evidence of any ratios between the taxable value and the market value of the Subject Property and any of its alleged comparables. Without these ratio’s, the Commission is unable to determine if the valuations are proportionate as required by law.⁵⁹

Based upon all of the foregoing, we find the Taxpayer has not provided clear and convincing evidence that the taxable value of the Subject Property, as determined by the County Board, was not consistent with the principles of uniformity and proportionality as required by law.

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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board’s decisions were arbitrary or unreasonable. The Commission also finds that the Taxpayer did not establish by clear and convincing evidence that the valuations placed on the Subject Property when compared with values placed on other similar properties are grossly excessive and the result of systematic will or failure of a plain legal duty, and not just mere errors of judgment.

For all of the reasons set forth above, the appeals of the Taxpayer are denied.

⁵⁷ E10-16.

⁵⁸ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵⁹ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

VII. 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 2010 and 2011 are affirmed.⁶⁰
2. The taxable value of the Subject Property for tax year 2010 is \$3,459,300.
3. The taxable value of the Subject Property for tax year 2011 is \$4,700,500.
4. 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 (2012 Cum. Supp.)
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2010 and 2011.
8. This Decision and Order is effective for purposes of appeal on April 16, 2013.

Signed and Sealed: April 16, 2013

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

⁶⁰ Assessed 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.