

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

DK & CR Investments,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 13C 319

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

**For the Appellant:**

Aaron Shaul,  
Vice President

**For the Appellee:**

Jimmie Pinkham,  
Deputy Douglas County Attorney

This appeal was heard before Commissioners Robert W. Hotz and Steven A. Keetle.

**I. THE SUBJECT PROPERTY**

The Subject Property is a commercial parcel located at 4540 S. 79<sup>th</sup> Street, Omaha, Douglas County, Nebraska. The parcel is improved with a 6,770 square foot service garage. The legal description and the property record file for the Subject Property are found at Exhibit 2.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$397,600 for tax year 2013.<sup>1</sup> DK & CR Investments (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$204,500.<sup>2</sup> The County Board determined that the taxable value for tax year 2013 was \$397,600.<sup>3</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and

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<sup>1</sup> Exhibit 1:1.

<sup>2</sup> Exhibit 2:51.

<sup>3</sup> Exhibit 1:1.

submitted a Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on December 11, 2015.

### III. 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>

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

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<sup>4</sup> See, Neb. Rev. Stat. §77-5016(8) (2014 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).

<sup>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

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

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

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

<sup>9</sup> 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).

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

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 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.”<sup>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

## IV. 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.”<sup>14</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>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</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>19</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>20</sup> 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

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<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>14</sup> *Neb. Const.*, Art. VIII, §1.

<sup>15</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>16</sup> *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).

<sup>17</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>18</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>19</sup> *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).

<sup>20</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>21</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>22</sup>

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

Aaron Shaul testified on behalf of the Taxpayer as Vice-President of DK & CR Investments, LLC. Shaul testified that the Taxpayer purchased the Subject Property on January 4, 2010 for \$420,000 in what he asserted was an arm’s length transaction.<sup>23</sup> Shaul testified to his opinion that the Subject Property was not equalized with comparable properties in Douglas County.

The County Assessor utilized a Commercial Income Worksheet to assess the Subject Property.<sup>24</sup> According to the Income Worksheet, the Subject Property was assigned a rental rate of \$7.25, a vacancy & collection loss rate of 10%, an expense rate of 10%, and a capitalization rate of 10%.<sup>25</sup> The Taxpayer provided property record cards for four properties he asserted were comparable to the Subject Property.<sup>26</sup> The County Board provided property cards for three comparable properties.<sup>27</sup> The comparable characteristics of the Subject Property and each of the other properties are as follows:

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<sup>21</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>22</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>23</sup> See, Exhibit 2:7, the Real Estate Transfer Statement, Form 521.

<sup>24</sup> Exhibit 2:17.

<sup>25</sup> *Id.*

<sup>26</sup> See, Exhibits 3-6.

<sup>27</sup> See, Exhibit 2:27-28, Exhibit 2:32-33, and Exhibit 2:37-38.

Property	Exhibit(s)	Rental Rate	Vacancy Rate <sup>28</sup>	Expense Rate	Cap. Rate <sup>29</sup>	Year Built	Square Footage	Condition	Quality
Subject Property 4540 S. 79 <sup>th</sup> St.	Exhibit 2:1-10, Exhibit 2:15-25	\$7.25 <sup>30</sup>	10% <sup>30</sup>	10% <sup>30</sup>	10% <sup>31</sup>	1976 <sup>32</sup>	6,770 <sup>32</sup>	Average <sup>32</sup>	Average <sup>32</sup>
8526 I St.	Exhibit 3	\$5.25 <sup>33</sup>	10% <sup>33</sup>	15% <sup>33</sup>	10% <sup>33</sup>	1979 <sup>34</sup>	9,000 <sup>34</sup>	Average <sup>34</sup>	Fair <sup>34</sup>
7868 F St.	Exhibit 4	\$5.25 <sup>35</sup>	15% <sup>35</sup>	15% <sup>35</sup>	10.5% <sup>35</sup>	1973 <sup>36</sup>	18,464 <sup>36</sup>	Fair <sup>36</sup>	Fair <sup>36</sup>
4224 S. 89 <sup>th</sup> St.	Exhibit 5	\$5.25 <sup>37</sup>	10% <sup>37</sup>	15% <sup>37</sup>	10% <sup>37</sup>	1974 <sup>38</sup>	5,250 <sup>38</sup>	Average <sup>38</sup>	Fair <sup>38</sup>
4303 S. 79 <sup>th</sup> Cir.	Exhibit 6	\$5.25 <sup>39</sup>	15% <sup>39</sup>	15% <sup>39</sup>	10.5% <sup>39</sup>	1983 <sup>40</sup>	14,400 <sup>40</sup>	Fair <sup>40</sup>	Fair <sup>40</sup>
8516 L St.	Exhibit 2:27-28	\$7.25 <sup>41</sup>	10% <sup>41</sup>	10% <sup>41</sup>	10% <sup>41</sup>	1972 <sup>42</sup>	5,750 <sup>42</sup>	Average <sup>42</sup>	Average <sup>42</sup>
5253 S. 133 <sup>rd</sup> Ct.	Exhibit 2:32-33	\$8.75 <sup>43</sup>	10% <sup>43</sup>	10% <sup>43</sup>	9.5% <sup>43</sup>	1998 <sup>44</sup>	5,250 <sup>44</sup>	Average <sup>44</sup>	Good <sup>44</sup>
4225 S. 80 <sup>th</sup> St.	Exhibit 2:37-38	\$7.25 <sup>45</sup>	10% <sup>45</sup>	10% <sup>45</sup>	10% <sup>45</sup>	1977 <sup>46</sup>	6,300 <sup>46</sup>	Average <sup>46</sup>	Average <sup>46</sup>

All of the properties above, including the Subject Property, were listed as Service Garages with an occupancy code of 325 and a neighborhood extension identifier of 18000. The Commission finds that the comparable properties most similar to the Subject property are the properties at 8516 L Street and 4225 S. 80<sup>th</sup> Street because of their strong similarity in age, condition, quality, and square footage.

<sup>28</sup> Vacancy & Collection Loss Rate

<sup>29</sup> Income Capitalization Rate.

<sup>30</sup> Exhibit 2:17.

<sup>31</sup> Exhibit 2:16-17.

<sup>32</sup> Exhibit 2:6.

<sup>33</sup> Exhibit 3:5.

<sup>34</sup> Exhibit 3:3.

<sup>35</sup> Exhibit 4:6.

<sup>36</sup> Exhibit 4:3. The improvements were remodeled in 1986.

<sup>37</sup> Exhibit 5:5.

<sup>38</sup> Exhibit 5:3.

<sup>39</sup> Exhibit 6:6.

<sup>40</sup> Exhibit 6:3.

<sup>41</sup> Exhibit 2:28.

<sup>42</sup> Exhibit 2:27.

<sup>43</sup> Exhibit 2:33.

<sup>44</sup> Exhibit 2:32.

<sup>45</sup> Exhibit 2:38.

<sup>46</sup> Exhibit 2:37.

When comparing the Subject Property to these most similar properties by reviewing the Commercial Income Worksheet for each property, it is apparent that each of the factors used in the income approach were the same when comparing the Subject Property to both of these most similar and most comparable properties: a rental rate of \$7.25 per square foot, a vacancy & collection loss rate of 10%, an expense rate of 10%, and an income capitalization rate of 10%.

## **V. 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 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. The Commission further 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 decision of the County Board should be affirmed.

## **VI. 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 2013 is affirmed.
2. The assessed value of the Subject Property for tax year 2013 is \$397,600.
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 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this decision and Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order and order shall only be applicable to tax year 2013.

7. This Decision and Order is effective for purposes of appeal on December, 21 2015.<sup>47</sup>

Signed and Sealed: December 21, 2015

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Robert W. Hotz, Commissioner

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Steven A. Keetle, Commissioner

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<sup>47</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.