

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

Blair Apartments, LLC,  
Appellant,

v.

Washington County Board of Equalization

Case Nos: 10C 007 & 11C 019

Order Affirming the Determination of the  
Washington County Board of Equalization

**For the Appellant:**  
Brian Bidne, Member,  
Pro Se

**For the Appellee:**  
Edmund E. Talbot III,  
Deputy Washington 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 located in Washington County. The parcel is improved with a 72 unit apartment complex, built in 2000. In both appeals, the legal description of the parcel is found at Exhibit 1 and the property record card for the subject property is found at Exhibit 4.

**II. PROCEDURAL HISTORY**

The Washington County Assessor determined that the assessed value of the subject property was \$4,036,540 for tax year 2010 and \$3,453,455 for tax year 2011. Blair Apartments, LLC (the Taxpayer) protested these assessments to the Washington County Board of Equalization (the County Board) and requested an assessed valuation of \$2,650,000 for both tax years 2010 and 2011. After receiving a recommendation from a Referee in the 2010 Protest proceeding,<sup>1</sup> the Washington County Board determined that the assessed value was \$3,453,455 for tax year 2010.<sup>2</sup> The County Board also determined taxable value to be \$3,453,455 for tax year 2011.<sup>3</sup>

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

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<sup>1</sup> The Referee was appointed by the County Board pursuant to Neb. Rev. Stat. § 77-1502.01. The recommendation by the Referee for tax year 2010 is found at Exhibit 1, page 3 in Case No. 10C-007.

<sup>2</sup> Exhibit 1 in Case No. 10C-007.

<sup>3</sup> Exhibit 1 in Case No. 11C-019.

stipulated to the receipt of exchanged exhibits. The parties also stipulated that taxable value for both tax years 2010 and 2011 would be the same. The Commission held a consolidated hearing on February 16, 2012.

### 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>

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<sup>4</sup> See, Neb. Rev. Stat. §77-5016(8) (2010 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) (2010 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> *Bottof 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.”<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>

#### 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.<sup>13</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>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</sup> 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.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</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>18</sup>

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<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2011 Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>14</sup> *Id.*

<sup>15</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>17</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## B. Summary of the Evidence

For its 2010 determination of value, the County Board relied upon the recommendation made by William Kaiser, who had been appointed by the County Board as a Referee.<sup>19</sup> The County Assessor indicated that he concurred with the value recommendation made by the Referee, reasoning that the Subject Property is “similar in quality” to Northview, an apartment complex in Blair, and to an apartment complex in Fort Calhoun.<sup>20</sup> The Assessor proposed to the County Board that the Subject Property be “equalized” with these other apartment complexes at approximately \$41 per square foot.<sup>21</sup>

At the hearing before the Commission, the County Board provided evidence of the taxable value of the Subject Property which included calculations of value using all three approaches to value. The cost approach indicated a taxable value of \$3,884,290.<sup>22</sup> The sales comparison approach indicated a taxable value of \$4,039,000.<sup>23</sup> And the income approach indicated a taxable value of \$3,801,600.<sup>24</sup> However, the County Board had determined the taxable value of the Subject Property to be \$3,453,455 for both tax years 2010 and 2011 relying upon the recommendation of the Referee in 2010.

William Kaiser testified on behalf of the County Board. Kaiser explained that he reached the recommendation of \$3,453,455 by comparing assessed values of other parcels which were valued using the three approaches to value. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes. The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>25</sup> Unless there are no differences requiring adjustments, the comparison of *assessed* values of other properties is not recognized as an appropriate approach. Kaiser’s approach of valuing the Subject Property by comparing the assessed values of other parcels is not an appropriate approach to value real property under Nebraska law.

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<sup>19</sup> See Neb. Rev. Stat. § 77-1502.01. Kaiser’s recommendation for tax year 2010 was \$3,453,455, as found at Exhibit 1, page 3 in Case No. 10C-007.

<sup>20</sup> Exhibit 1, page 3 in Case No. 10C-007.

<sup>21</sup> Exhibit 1, page 3 in Case No. 10C-007.

<sup>22</sup> Exhibit 5, pages 17-23.

<sup>23</sup> Exhibit 5, pages 24-36.

<sup>24</sup> Exhibit 5, pages 37-40.

<sup>25</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

We find therefore, that there is competent evidence to rebut the presumption in favor of the County Board's determination of taxable value since the basis for that value was the comparison of the assessed value of the Subject Property to the assessed values of other properties without accounting for differences between the properties. We also find that this same evidence is clear and convincing evidence that the determination made by the County Board was arbitrary or unreasonable.

Brian Bidne, a Managing Member of Blair Apartments, LLC, testified on behalf of the Taxpayer. Bidne testified that the Taxpayer purchased the Subject Property on March 27, 2008, in lieu of foreclosure,<sup>26</sup> and sold the Subject Property on August 18, 2011, in an arm's-length transaction for \$3,591,500.<sup>27</sup>

While we have found the presumption in favor of the County Board's determination has been rebutted and that there is clear and convincing evidence that the County Board's determination of taxable value is arbitrary or unreasonable, we find that the Taxpayer has not presented competent evidence that the taxable value of the Subject Property is less than that 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."<sup>28</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>29</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative

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<sup>26</sup> The Real Estate Transfer Statement, Exhibit 4:35 in both appeals, indicates that the sale was exempt and thus lists no sales price.

<sup>27</sup> The sale occurred more than 8 months after January 1, 2011, and more than 20 months after January 1, 2011. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

<sup>28</sup> *Neb. Const.*, Art. VIII, §1.

<sup>29</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>30</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>31</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>32</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>33</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>34</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 grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>35</sup> “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>36</sup>

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

Brian Bidne testified on behalf of the Taxpayer. He primarily asserted that the equalized value of the Subject Property should be derived from the assessed value of an apartment complex known as Quail Run,<sup>37</sup> which Bidne asserted is comparable to the Subject Property. Bidne testified that there were only two 72-unit apartment complexes in the city of Blair; the Subject Property, and a complex known as Quail Run. Bidne asserted that Quail Run was located one-quarter mile from the Subject Property and was the Subject Property’s direct competition for tenants. Regarding the comparability of the two complexes, Bidne testified that the unit floor plans, apartment square footage, kitchen cabinets, and countertops were the same in both apartment complexes. However, evidence was also received showing that the Quail Run complex had more two-bedroom apartments, that Quail Run was four years older (built in 1996),

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<sup>30</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>31</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>32</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>33</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>34</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>35</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>36</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>37</sup> Property Record Cards for Quail Run are found at Exhibit 6:7-23 for tax year 2010, and at Exhibit 7:9-23 for tax year 2011.

and that the two complexes had different numbers of bathrooms. Despite these differences, and without making adjustments for them, Bidne asserted that the Subject Property should be equalized to the assessed value of Quail Run for each of the two tax years, 2010 and 2011.

William Kaiser also testified regarding the comparability of the Subject Property to Quail Run. He testified that the Subject Property was a higher quality of construction, and had better storage per unit. He also said that the Subject Property had more bathrooms per unit. Exhibit 9 indicates that each complex had 12 three-bedroom units, but the Subject Property had 48 two-bedroom units while Quail Run had 60, and the Subject Property had 12 one-bedroom units while Quail Run had none.

For purposes of determining an equalized value of the Subject Property, the evidence regarding the comparability of the Subject Property and Quail Run is in dispute. If the properties were substantially the same, the Uniformity Clause<sup>38</sup> might require that the assessed value of the Subject Property be no greater than the assessed value of Quail Run. However, based upon the evidence received, we do not find that the Subject Property and Quail Run are similar enough to make such a comparison without making adjustments to Quail Run for the various differences. Therefore, we find that there is not clear and convincing evidence that the County Board's determination of taxable value of the Subject Property compared with the valuation placed on Quail Run is grossly excessive.

## **VI. 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. However, there is not competent evidence that the taxable value of the Subject Property should be lower than determined by the County Board. The Commission also finds there is not clear and convincing evidence to order an equalized value for the Subject Property.

For all of the reasons set forth above, the determinations by the County Board are affirmed.

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<sup>38</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 this Constitution." Neb. Const., Art. VIII, §1.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Washington County Board of Equalization determining the value of the Subject Property for both tax years 2011 and 2010 are affirmed.
2. The assessed value of the Subject Property for both tax years 2010 and 2011 is \$3,453,455.
3. This Order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington 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 Order shall only be applicable to tax years 2010 and 2011.
7. This Order is effective for purposes of appeal on November 2, 2012

Signed and Sealed: November 2, 2012

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Robert W. Hotz, Commissioner

SEAL

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Nancy J. Salmon, Commissioner

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.