

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Reeder Family, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 11C-516

Decision and Order Affirming the Douglas
County Board of Equalization

For the Appellant:

Mark Holmberg,
Attorney at Law

For the Appellee:

Sandra Connolly,
Douglas County Attorney

The appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located at 8204 Serum Street, Ralston, Douglas County, Nebraska, and is improved with three storage warehouses.¹ The legal description of the parcel is found at Exhibit 2, Page 7. The property record card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$340,500 for tax year 2011.² Reeder Family, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$229,209 for tax year 2011.³ The County Board determined that the assessed value for tax year 2011 was \$313,700.⁴

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, as ordered

¹ E2:7.

² E1:1.

³ E2:85.

⁴ E1:1.

by the Commission. The Commission held a hearing on May 20, 2013. At the hearing, the parties stipulated to the receipt of exchanged Exhibits 1-10.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁵ 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."⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ 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.¹¹

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

⁵ 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

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

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottof 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.”¹² 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.”¹³

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.¹⁴

“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.”¹⁵ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

¹² Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Id.*

¹⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

The Subject Property consists of three storage warehouses on a 35,604 square foot lot:²⁰ Building 1 was built in 1976, was heated, was rated by the Assessor as being fair quality and fair condition, and with a size of 4,800 square feet;²¹ Building 2 was built in 1985, was rated by the Assessor as being average quality and average condition, and with a size of 2,340 square feet;²² and Building 3 was built in 2004, was rated by the Assessor as being average quality and average condition, and with a size of 5,160 square feet.²³

The Assessor utilized the income approach to determine the actual value of each building on the Subject Property and then combined the values of each individual building to determine the total improvement value for the Subject Property.²⁴ The following chart summarizes the factors used in the Assessor's income approach:

Subject Property	Size in Square Feet	Rental Rate per Square Foot	Vacancy and Collection Loss Rate	Expense Rate	Capitalization Rate	Total Indicated Value
Building 1	4,800	\$2.50	10%	20%	10%	\$86,400 ²⁵
Building 2	2,340	\$4.00	10%	20%	8.5%	\$79,300 ²⁶
Building 3	5,160	\$4.00	10%	20%	8.5%	\$174,800 ²⁷

Steven Reeder, a Member of Reeder Family, LLC,²⁸ testified on behalf of the Taxpayer. Reeder was not a licensed appraiser, but was involved in the purchase of the Subject Property in 2000 and testified concerning the Subject Property's characteristics and rental history as of January 1, 2011.

²⁰ E2:7.

²¹ E2:8.

²² E2:9.

²³ E2:10.

²⁴ E2:7, E2:22-24.

²⁵ E2:22.

²⁶ E2:23.

²⁷ E2:24.

²⁸ Reeder was a residential real estate investor with a B.A. in Marketing from the University of Nebraska and was previously licensed as a real estate broker in Nebraska, and was employed in that capacity by CB Richard Ellis Mega until 2008.

The Commission received the 2010 actual income and expense data for the Subject Property,²⁹ and an income approach worksheet for tax year 2011, based upon projected income and expenses as offered and authored by the Taxpayer.³⁰ The income approach worksheet calculated the gross operating income for each of the buildings separately, and then subtracted aggregate actual expenses, and finally divided the aggregate derived net operating income by an 11% capitalization rate.³¹ The following table summarizes the Taxpayer's income approach worksheet found in Exhibit 8, Page 2:

Subject Property	Size in Square Feet	Rental Rate per Square Foot	Vacancy and Collection Loss Rate	Expense Rate	Capitalization Rate	Actual Value
Building 1	4,800	\$4.00	10%	Combined	11%	combined
Building 3	2,340	\$3.25	20%	combined	11%	combined
Building 2	5,160	\$3.25	20%	combined	11%	combined
Total				\$11,567	11%	\$229,209

In reaching its determination, the County Board appears to have relied upon a recommendation made prior to the protest proceeding by a Referee.³² The Commission has determined that the Referee made this recommendation after conducting an income approach calculation utilizing the following factors: (1) gross income based upon the Taxpayer's Gross Projected Income calculations of \$19,200 for Building 1 ($\$4.00 \times 4,800 = \$19,200$), and \$24,375 for Buildings 2 and 3 ($(\$3.25 \times (2,340 + 5,160)) = \$24,375$), for a total Gross Operating Income of \$43,750;³³ (2) a vacancy and collection loss rate of 10% for all three buildings;³⁴ (3) an

²⁹ E9:1.

³⁰ E8:2.

³¹ E8:2.

³² See, Neb. Rev. Stat. §77-1502.01 (Reissue 2009) defining the authority of the County Board to appoint a Referee.

³³ E2:88; E8:2.

³⁴ The Commission notes that the Referee incorrectly added $\$19,200 + \$24,375$ to equal \$43,750. The corrected sum is \$43,575.

³⁵ E2:88. This is the rate used by the County Assessor. The Taxpayer agreed to a vacancy and collection loss rate of 10% for Building 1, but suggested a vacancy and collection loss rate of 20% for Buildings 2 and 3 as shown in E8:2.

expense rate of 20% for all three buildings;³⁶ and (4) a capitalization rate of 10% for all three buildings.³⁷

The Commission finds as follows: (1) the County Board's reliance on the rental rates of \$4.00 for Building 1 and \$3.25 for Buildings 2 and 3 was not arbitrary or unreasonable; these rates were in fact the rates suggested by the Taxpayer;³⁸ (2) the County Board's reliance on the vacancy and collection loss rates of 10% for all three buildings was not arbitrary or unreasonable; the Taxpayer did not provide clear and convincing evidence that the vacancy and collection loss rates for Buildings 2 and 3 should be more than 10%; (3) the County Board's reliance on expense rates of 20% for all three buildings was not arbitrary or unreasonable; the Taxpayer did not provide clear and convincing evidence that the expenses should be more than 20%; and (4) the County Board's reliance on a capitalization rate of 10% for all three buildings was not arbitrary or unreasonable; the Taxpayer did not provide clear and convincing evidence that the capitalization rate should be greater than 10%.

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.”³⁹ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁴⁰ 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.⁴¹ 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.⁴² Uniformity requires that whatever methods are used to determine actual or taxable value for various

³⁶ E2:88. The 20% rate is the rate used by the Assessor. The Taxpayer projected expenses as shown in E8:2.

³⁷ E2:88. This is the rate used by the Assessor for Building 1. The Assessor used a lower capitalization rate of 8.5% for Buildings 2 and 3. E2:23-24. The Taxpayer suggested a higher capitalization rate of 11% for all three buildings.

³⁸ E8:2.

³⁹ *Neb. Const.*, Art. VIII, §1.

⁴⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁴¹ *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).

⁴² *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

classifications of real property that the results be correlated to show uniformity.⁴³ 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.⁴⁴ The constitutional requirement of uniformity in taxation extends to both rate and valuation.⁴⁵ 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].”⁴⁶ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁷

B. Summary of the Evidence

The Taxpayer asserted that the Subject Property was not equalized with two other improved parcels located in close proximity to the Subject Property on Serum Street. The first alleged comparable property (Parcel 0062) was a commercial parcel improved with three storage warehouses on a 28,469 square foot lot:⁴⁸ Building 1 was built in 1998, is heated, was rated by the Assessor as being fair quality and average condition, with a size of 5,200 square feet;⁴⁹ Building 2 was built in 1990, was rated by the Assessor as being average quality and average condition, with a size of 3,000 square feet;⁵⁰ and Building 3 was built in 1990, was rated by the Assessor as being average quality and average condition, with a size of 2,700 square feet.⁵¹

The Assessor utilized the income approach to determine the actual value of each building on Parcel 0062 and then combined the values of each individual building to determine the improvement value for Parcel 0062.⁵² The following chart summarizes the factors used in the Assessor’s income approach:

⁴³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁴⁴ *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).

⁴⁵ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

⁴⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁷ *Id.* at 673, 94 N.W.2d at 50.

⁴⁸ E2:64.

⁴⁹ E2:65.

⁵⁰ E2:66.

⁵¹ E2:67.

⁵² E2:64, 65-67.

Parcel 0062	Size in Square Feet	Rental Rate per Square Foot	Vacancy and Collection Loss Rate	Expense Rate	Capitalization Rate	Total Indicated Value
Building 1	5,200	\$2.50	10%	20%	10%	\$93,600 ⁵³
Building 2	3,000	\$4.00	10%	20%	8.5%	\$101,600 ⁵⁴
Building 3	2,700	\$4.00	10%	20%	8.5%	\$91,500 ⁵⁵

The second alleged comparable property (Parcel 0157) was a commercial parcel improved with five storage warehouses on a 60,505 square foot lot.⁵⁶ Building 1 was built in 1990, was heated, was rated by the Assessor as being fair quality and average condition, with a size of 1,200 square feet;⁵⁷ Building 2 was built in 1994, was rated by the Assessor as being average quality and average condition, with a size of 3,714 square feet;⁵⁸ Building 3 was built in 1994, was rated by the Assessor as being average quality and average condition, with a size of 2,688 square feet;⁵⁹ Building 4 was built in 1999, was rated by the Assessor as being fair quality and average condition, with a size of 2,560 square feet;⁶⁰ and Building 5 was built in 2004, was rated by the Assessor as being fair quality and average condition, with a size of 4,000 square feet.⁶¹

The Assessor utilized the income approach to determine the actual value of each building on Parcel 0157 and then combined the values of each individual building to determine the improvement value.⁶² The following chart summarizes the factors used in the Assessor's income approach for Parcel 0157:

⁵³ E2:68.

⁵⁴ E2:69.

⁵⁵ E2:70.

⁵⁶ E2:72.

⁵⁷ E2:74.

⁵⁸ E2:75.

⁵⁹ E2:76.

⁶⁰ E2:77.

⁶¹ E2:78.

⁶² E2:72, 73-78.

Parcel 0157	Size in Square Feet	Rental Rate per Square Foot	Vacancy and Collection Loss Rate	Expense Rate	Capitalization Rate	Total Indicated Value
Building 1	1,200	\$2.50	10%	20%	10%	\$21,600 ⁶³
Building 2	3,714	\$4.00	10%	20%	8.5%	\$125,800 ⁶⁴
Building 3	2,688	\$4.00	10%	20%	8.5%	\$91,100 ⁶⁵
Building 4	2,560	\$2.50	10%	20%	10%	\$46,100 ⁶⁶
Building 5	4,000	\$2.50	10%	20%	10%	\$72,000 ⁶⁷

Based upon our review of the property record cards for the Subject Property and the alleged comparable properties, the Commission finds that the Assessor uniformly valued each improvement with a fair quality rating at a rental rate of \$2.50 and a capitalization rate of 10%. The Commission further finds that each improvement with an average quality rating was valued by the Assessor using a rental rate of \$4.00 and a capitalization rate of 8.5%. Further, the Assessor uniformly used a vacancy and collection loss rate of 10% and an expense rate of 20% for all improvements.

The Referee's income approach, relied upon by the County Board, maintained the 10% vacancy and collection loss rate and the 20% expense rate as determined by the Assessor and applied to the alleged comparable properties. The Referee's use of a 10% capitalization rate for all 3 buildings on the Subject Property did not disfavor the Taxpayer when a lower 8.5% capitalization rate was applied to buildings most comparable to the Subject Property.

The Commission finds that the Subject Property was appropriately equalized with other similar properties and no violation of the Uniformity Clause⁶⁸ was evident.

⁶³ E2:79.

⁶⁴ E2:80.

⁶⁵ E2:81.

⁶⁶ E2:82.

⁶⁷ E2:83.

⁶⁸ *Neb. Const.*, Art. VIII, §1.

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. The Commission finds that there is not clear and convincing evidence that valuation placed on the Subject 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.

For all of the reasons set forth above, the determination by the County Board is affirmed.

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 2011 is affirmed.
2. The taxable value of the Subject Property for tax year 2011 is:

Land	\$ 18,300
<u>Improvements</u>	<u>\$295,400</u>
Total	\$313,700

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 (2012 Cum. Supp.).
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 2011.

7. This Decision and Order is effective for purposes of appeal on May 29, 2013.

Signed and Sealed: May 29, 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.