

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Dennis Tebbe,
Appellant,

v.

Adams County Board of Equalization,
Appellee.

Case Nos: 19R 0001 & 20R 0361

Decision and Order Reversing the
Determination of the Adams
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,700 square foot one story residence, with a legal description of: 27-07-10-601.00-Lot 4 Southern Hills Acres Sub-Div PT W ½ 27-7-10 Denver Twp., Adams County, Nebraska.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$230,255 for tax years 2019 and 2020.
3. Dennis Tebbe (the Taxpayer) protested these values to the Adams County Board of Equalization (the County Board) and requested assessed values of \$209,355 for tax year 2019 and \$210,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$230,255 for tax years 2019 and 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 21, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. David J. Skalka, Attorney, and Dennis Tebbe were present at the hearing for the Taxpayer.
8. David A. Bergin, Deputy Adams County Attorney, and Jackie Russell, Adams County Assessor (County Assessor), were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission’s review of a determination of the County Board of Equalization is de novo.²

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *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

11. When considering an appeal 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.”³ 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.”⁴
12. 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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property is too high as it does not take account the Subject Property’s placement in a floodplain in 2018.
17. The Taxpayer presented an appraisal report for the Subject Property purporting to have been developed and prepared in accordance with the Uniform Standards of Professional Practice.
18. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁹
19. The appraisal report performs the sales comparison approach and the cost approach to value when determining the value of the Subject Property.
20. The appraisal report indicates that the appraiser was aware that the Subject Property had been placed in a floodplain in 2018 and that there were no sales of similar properties in

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).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

the floodplain. The appraiser therefore relied on a 2015 report regarding properties and floodplains in New York City to determine that a 10% adjustment to properties not located in the floodplain would be appropriate. A copy of this report was presented to the Commission.

21. The 2015 floodplain report was an analysis of the impact of the *proposal* of new floodplain maps in New York City after Hurricane Sandy in 2012; these maps were not in effect at the time of the 2015 report. The report states that there may be an impact on the sales by the actual damage caused by Hurricane Sandy but that the impact of damage was not accounted for.
22. The 2015 floodplain report shows a significant difference on the impact of the proposed floodplain designations depending on the value of the property, as divided into four categories which remove the lowest valued properties. Of the properties in the newly proposed floodplains, the low-end properties show the largest impact, but the middle-upper range properties show almost no impact. The report contains no information regarding the values placed in any group except the low-end properties. There is no additional information presented to equate the values of residential parcels in Adams County, Nebraska to the values of residential parcels in New York City.
23. The County Assessor stated that the floodplain in which the Subject Property was placed was proposed in 1989 and finally made effective in 2018.
24. The County Assessor agreed that there were no sales of properties located in the floodplain south of Hastings; however, there were sales in other floodplains in the county.
25. The County Assessor presented an analysis of properties sold in Adams County that showed which sales were in the floodplain and which sales were outside of the floodplain for each of the tax years at issue.
26. The County Assessor was unable to determine any discernable difference in value between properties located in a floodplain and properties outside of a floodplain in Adams County.
27. A review of the adjustments in the appraisal report shows that while the 10% adjustment was applied to two of the sales, it was not applied to the other two non-floodplain sales. There was also no adjustment made for properties that were not located on a golf course like the Subject Property.
28. The Commission finds that the appraisal report does not sufficiently explain or support the adjustments applied to the values of the comparable properties used in the sales comparison approach. For this reason, the Commission is unable to give the appraisal report much weight.¹⁰

¹⁰ “It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998).

29. The Commission finds that the sales information presented does not support an adjustment to reduce assessed values based on the location of a property in a floodplain in Adams County.
30. The Taxpayer alleges that the assessed value of the land component of the Subject Property is not equalized with other comparable properties.
31. The Taxpayer presented the Property Record File (PRF) for one parcel and information from the County Assessor's web site for a second parcel, both located in the same subdivision as the Subject Property. One of the parcels is owned by the Taxpayer and is adjacent to the Subject Property to the south. The other parcel is located seven lots north of the Subject Property.
32. The County Assessor presented the PRF for the Subject Property.
33. The County Assessor stated that the land components of all parcels located near the Subject Property are assessed at \$1.85 per square foot for the first 20,000 square foot of lot size and at \$0.90 per square foot above that amount. These amounts were determined based on a 15% allocation of sales prices to the land components of sales in Adams County. The County Assessor then applied a vacancy rate to vacant parcels, reducing their assessment to 30% of their value as determined on a per square foot basis.
34. Land must be valued as though vacant and available to develop to its highest and best use.¹¹
35. Applying a vacancy rate to reduce the value of the land component on a vacant parcel, while not applying this same rate to an improved parcel, places their values on the assessment rolls at a non-uniform percentage of actual value.
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.¹²
37. 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.¹³
38. The Commission finds and determines that the equalized value of the land component of the Subject Property for tax years 2019 and 2020 is \$11,100, which, when combined with the improvement value of \$193,255, results in a total assessed value of \$204,355.
39. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
40. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

¹¹ Title 350 Neb. Admin. Code ch 50 §002.05A (7/17), See also, International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010)

¹² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹³ *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).

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is:

Land	\$ 11,100
<u>Improvements</u>	<u>\$193,255</u>
Total	\$204,355

3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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 years 2019 and 2020.
7. This Decision and Order is effective on January 4, 2022.

Signed and Sealed: January 4, 2022

Steven A. Keetle, Commissioner