

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

EEA TRUST
APPELLANT,

CASE NOS: 20R 0339 & 21R
0557

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

For the Appellant:
Anthony Schrager,
Trustee, EEA Trust,

For the Appellee:
Jimmie Pinkham,
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 1.25-acre residential parcel improved with a 4,853 square foot 1-and-1/2-story residence located in Omaha, Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 3.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined the assessed value of the Subject Property was \$1,689,900 for tax years 2020 and 2021.¹ EEA Trust (the Taxpayer) protested these assessments to the Douglas

¹ Exhibit 1:1 and Exhibit 2:1.

County Board of Equalization (the County Board). The County Board determined the taxable value of the Subject Property for tax year 2020 was \$1,689,900² and \$1,510,000 for tax year 2021.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on May 25, 2022. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1-66 and 68 were admitted into evidence. Exhibit 67 was not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁴ 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.⁵

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.⁶

² Exhibit 1:1.

³ Exhibit 2:1.

⁴ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁵ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁶ *Id.*

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹⁰

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.¹¹ The Commission may take notice of judicially cognizable facts, 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. 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 Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT LAW

Under Nebraska law,

Actual 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 Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.¹⁵ Nebraska courts have held that 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 Neb. Rev. Stat. § 77-201 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

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 the Nebraska

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

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

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.²⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.²¹ 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.²² 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.²³ 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.²⁴ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁶

V. WITNESS TESTIMONY

A. Testimony of Anthony Schrager

Anthony Schrager was the Trustee of the Taxpayer Trust. In reviewing the assessment of the Subject Property, Schrager looked to the nearest neighbors for comparable properties. After the protest to the County Board was rejected in tax year 2020, Schrager stated he expanded the scope of review to include other comparable properties.

²⁰ Neb. Const., art. VIII, § 1.

²¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²² *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).

²³ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²⁴ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁶ *Id.* at 673, 94 N.W.2d at 50.

In discussing the Property Record File for the Subject Property, Schragger generally agreed with the condition, square footage measurements, and amenities listed, but did state the pool had been in disrepair.

Schragger presented a chart of proposed comparable properties.²⁷ In the summary of the data, Schragger stated he examined three groups of properties – those that sold for over one million dollars over the prior 24 months; the comparable properties provided by the county;²⁸ and properties in the proximate neighborhood of the Subject Property. Schragger further stratified these groups to exclude two-story properties and those properties with quality and condition ratings below “very good.” Schragger stated he selected a ‘supergroup’ of the most-similar properties to compare with the Subject Property. Within the ‘supergroup’ at least one was sold for over one million dollars within the prior 24 months.

In analyzing this ‘supergroup’ Schragger found the average assessed price per square foot to be \$159, compared to the Subject Property at \$276 per square foot. Schragger acknowledged he did not exclude the land values when performing his analysis. He also noted that the assigned referee during the protest process had recommended a lower valuation for the Subject Property.

Schragger argued the 2018 sale of the Subject Property was listed on the County’s comparable list as having “Excellent” quality and condition ratings at the time of the sale. He also pointed out that the neighborhood adjustment factor for the proximate properties was .8087 for 2021 whereas the Subject Property’s was 1.0.²⁹

Schragger testified the Subject Property was on the market for several months without an offer. He stated it was his understanding the prior owner would stand firm on a sale price of \$1.8 million dollars. Schragger believed the price for the Subject Property was too high in

²⁷ Exhibit 7.

²⁸ These comparables are also shown in Exhibit 3.

²⁹ Compare Exhibits 3:9 and 5:4.

August 2018, when \$1.8 Million was paid.³⁰ A Multiple Listing Service (MLS) listing of the Subject Property dated May 23, 2018, shows a list price of \$2.3 million.³¹ Schragger conceded that remodeling of the Subject Property was done in 2019, including carpeting, flooring, kitchen counters, etc.

B. Testimony of Scott Barnes

Scott Barnes was a residential appraiser for the County Assessor. He holds the Residential Evaluation Specialist designation from the IAAO. Barnes had reviewed the Subject Property for the hearing but did not conduct the initial assessments in tax year 2020 and tax year 2021.

Barnes stated residential property in Douglas County is valued at market value using a computer-assisted mass appraisal software program. The cost approach to value was used to value the Subject Property for both tax years 2020 and 2021. Barnes stated this approach was used as it was found to be the most effective means to arrive at the market value for residential properties.

To calculate the replacement cost-new, the Marshall & Swift costing tables were used and certain factors such as style, quality of construction, exterior finish, story height, etc. are factored in along with square footage. Add-on value is adjusted based upon certain amenities to a specific property. Depreciation is factored in based upon a property's age and other physical and economic factors.

Regarding the neighborhood adjustments, Barnes testified the 1.000 adjustment shown on Exhibit 5:10 would not have been the adjustment applied to the Subject Property for the 2021 tax year because the County Board had changed the value during the protest proceedings. Barnes stated when a change occurs outside of the mass-appraisal software system, the neighborhood adjustment defaults to 1.000 on the printed PRFs. So, the 1.000 neighborhood adjustment

³⁰ Exhibit 68 is the Real Estate Transfer Statement for the Taxpayer's purchase of the Subject Property.

³¹ Exhibit 6:7-8.

ultimately was not used in the assessment for tax year 2021. Instead, Barnes testified that since the Subject Property's neighborhood was not revalued for tax year 2021, the calculations used to create the 2020 cost approach assessment would demonstrate the neighborhood adjustment used to reach the assessor's valuation for both the 2020 and 2021 tax years.

In discussing the comparables selected by the County Assessor, Barnes acknowledged that only 8 of the 20 comparable properties were sited within the neighborhood of the Subject Property.³² Compared to those eight properties, the Subject Property is the second-most recently built, is one of only two 1.5-story homes, and has the second-largest amount of basement finish.

Barnes also discussed the comparable assessment-to-sale ratio report at Exhibit 65. This report indicated the ratio for the Subject Property was 94%.³³ The median assessment-to-sale ratio for the Subject Property's neighborhood was 96% in 2020,³⁴ and 92% for 2021.³⁵

As to the quality and condition ratings of "Excellent" listed for the 2018 sale of the Subject Property, Barnes stated the condition rating was subsequently reviewed and adjusted for later assessment.

When asked why the physical depreciation factor listed for tax year 2020 was only 3.68% for a 15-year-old property when a figure of 10-12% would be expected, Barnes acknowledged that a senior appraiser for the County Assessor may have made an override adjustment to the depreciation figures based upon condition of the property.

VI. ANALYSIS

As noted above, Schragger did not generally dispute the measurements or amenities, and generally agreed with the condition

³² Exhibits 62 and 63.

³³ Exhibit 65:1.

³⁴ *Id.*

³⁵ Exhibit 66:1.

rating assigned for the Subject Property for both tax years. Further, the testimony of Barnes indicates that while the neighborhood adjustment factor was listed as higher on the 2021 PRF than the 2020 PRF, this was due to a computer system peculiarity as the County Board had set the value for 2021. Thus, the data and calculations for the 2021 valuation set by the County Assessor are substantially the same as those used in the 2020 PRF.

However, as Barnes testified, the Subject Property was assigned a depreciation factor of 3.68% in the County Assessor's 2020 and 2021 assessments. Barnes stated these were due to market adjustments entered by other County Assessor staff. While "[c]urrent cost and depreciation data adjusted to the local market are required for the cost approach,"³⁶ the Marshall & Swift depreciation tables for a single-family home with frame construction of excellent build quality (like the Subject Property) has a life expectancy of 60 years.³⁷ With an effective age of 14 years, Marshall & Swift's *Residential Cost Handbook* lists the depreciation at 12%.³⁸ Given the large discrepancy between the expected depreciation factor and the depreciation factor used in the assessment, without sufficient information as to the basis for adjusting the depreciation factor by almost 9%, the Commission finds the 3.68% depreciation to be unreasonable.

"Depreciation is loss in value due to any cause. It is the difference between the market value of a structural improvement or piece of equipment and its reproduction or replacement cost as of the date of valuation. Depreciation is divided into three general categories,

³⁶ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 3.6 (July 2017).

³⁷ Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-15 (12/2019).

³⁸ *Residential Cost Handbook*, at E-17.

physical, functional, and external.”³⁹ “Physical depreciation is loss in value due to physical deterioration.”⁴⁰

The cost approach includes six steps:

(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.⁴¹

A. Tax Year 2020 Depreciation Factors

From the 2020 PRF, it appears depreciation was not calculated until the values of accessory improvements were added to the base value of the Subject Property. As equipment such as HVAC, sprinkler systems, and swimming pools have separate life expectancies, they would accordingly have different depreciation schedules. According to the *Residential Cost Handbook*,

Accordingly, the base value of the Subject Property of \$1,339,923 indicated on the 2020 PRF,⁴² with 12% subtracted for depreciation equals \$1,179,132 for the replacement cost-new less depreciation (RCNLD). The three add-on components valued by the County – the

³⁹ *Id.*, at E-1 (12/2019).

⁴⁰ *Id.*

⁴¹ International Association of Assessing Officers, *Property Assessment Valuation* 230 (3rd ed. 2010); see Appraisal Institute, *The Appraisal of Real Estate* 532-33 (15th ed. 2020).

⁴² Exhibit 3:8

HVAC system, swimming pool, and sprinkler irrigation system, must also be depreciated according to their life expectancies.

The HVAC system, with an excellent build quality, has a life expectancy of 20 years.⁴³ With a 14-year effective age, a 61% depreciation figure is warranted.⁴⁴ With a value assigned at \$13,588,⁴⁵ the RCNLD would be \$5,299.

For the swimming pool, with excellent build quality, a 30-year life expectancy is assigned.⁴⁶ A 37% depreciation would be used for a 14-year effective age.⁴⁷ With a replacement cost-new (RCN) of \$27,580,⁴⁸ subtracting the depreciation would result in an RCNLD of \$17,375.

Lastly, the sprinkler system, with excellent build quality, has a life expectancy of 28 years.⁴⁹ A 42% depreciation factor is warranted for this item.⁵⁰ With an RCN of \$3,500,⁵¹ this results in an RCNLD of \$1,470.

Using these revised depreciation figures and the remaining add-on values found at Exhibit 3:8, with the correct depreciation factor of 12% applied, the additional add-on value would be \$466,030.

Adding the revised values together, an improvement RCNLD would be \$1,669,306 prior to a neighborhood adjustment. Applying the .8087 neighborhood adjustment, a value of \$1,349,968 is reached. We will not apply the 1.02 quality adjustment applied by the County Assessor because all of the depreciation adjustments made above were based on the quality grade of excellent. This results in a final improvement

⁴³ *Residential Cost Handbook*, at E-9.

⁴⁴ *Id.* at E-17.

⁴⁵ Exhibit 3:8.

⁴⁶ *Residential Cost Handbook*, at E-14.

⁴⁷ *Id.* at E-17 (12/2019).

⁴⁸ Exhibit 3:8.

⁴⁹ *Residential Cost Handbook*, at E-14.

⁵⁰ *Id.* at E-28.

⁵¹ Exhibit 3:8.

value of \$1,349,968. Adding the land value of \$168,700 results in a total value of \$1,518,668.

The Commission finds the value of the Subject Property for tax year 2020 to be \$1,518,668, with \$168,700 allocated to the land component and \$1,349,968 allocated to the improvements.

B. Tax Year 2021 Depreciation Factors

As the effective age of the Subject Property and its components would have increased to a 15-year effective age in tax year 2021, certain depreciation factors will have changed. There is still a 12% depreciation used for the base.⁵² However, the base value has changed to \$1,167,455.⁵³ Using the 12% depreciation, the RCNLD would be \$1,027,360.

The HVAC system, with a life expectancy of 20 years, would have a depreciation of 66%.⁵⁴ With an RCN of \$12,230, this results in an RCNLD of \$4,158. For the swimming pool, with a 30-year life expectancy, a 40% depreciation adjustment is applied.⁵⁵ With an RCN of \$27,580,⁵⁶ a RCNLD of \$16,548 results. Lastly, the sprinkler system, with a life expectancy of 28 years, would warrant a 46% depreciation.⁵⁷ With an RCN of \$3,500, the RCNLD is \$1,890. The remaining add-on values,⁵⁸ with a depreciation of 12%, results in a value of \$417,828.

Adding the revised values together, an improvement RCNLD would be \$1,467,654 prior to a neighborhood adjustment. As Barnes testified, the neighborhood adjustment used in 2020 would have been appropriate for calculating the 2021 assessment for the Subject Property. Applying the .8087 neighborhood adjustment, a value of \$1,186,892 is reached. For the same reasons noted above, we will not apply the 1.02 quality adjustment. This results in a final improvement

⁵² *Residential Cost Handbook*, at E-17.

⁵³ Exhibit 5:9.

⁵⁴ *Residential Cost Handbook*, at E-17.

⁵⁵ *Id.*, at E-17.

⁵⁶ Exhibit 5:9.

⁵⁷ *Residential Cost Handbook*, at E-28.

⁵⁸ Exhibit 5:9.

value of \$1,186,892. Adding the land value of \$168,700 results in a total value of \$1,355,592

The Commission finds the value of the Subject Property for tax year 2021 to be \$1,355,592, with \$168,700 allocated to the land component and \$1,186,892 allocated to the improvements.

VII. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is clear and convincing evidence the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax years 2020 and 2021 are vacated and reversed.

2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 168,700
<u>Improvements</u>	<u>\$ 1,349,968</u>
Total	\$ 1,518,668

3. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 168,700
<u>Improvements</u>	<u>\$ 1,186,892</u>
Total	\$ 1,355,592

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 (Reissue 2018).

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 2020 and 2021.
8. This Decision and Order is effective for purposes of appeal on July 8, 2024.⁵⁹

Signed and Sealed: July 8, 2024

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁵⁹ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.