

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

MICHAEL N. GORMAN
APPELLANT,

CASE NO: 20R 0403

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING IN PART AND
REVERSING IN PART THE
DECISION OF THE DOUGLAS
COUNTY BOARD OF
EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 1038338102.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$832,200 for tax year 2020.
3. Michael N. Gorman (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$756,500 for tax year 2020.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 15, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Gorman was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (County Appraisers) were present for the County Board.

II. 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
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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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 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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

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

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer alleged that the value of the land component of the Subject Property is not equalized with other comparable properties.
17. The Taxpayer presented the report of the County Board for his protest of the valuation, which indicates that the County Board adopted the referee's recommendation was that the valuation increase from the prior year was not warranted and to return the assessed value to the prior years assessed value.
18. The Taxpayer stated that he only alleged that the improvements on the Subject Property were overvalued to the County Board however the action taken by the County Board increased the land value.
19. The Taxpayer discussed the cost of acquiring the land component and the costs of constructing the improvements in 2016.
20. The Taxpayer presented the information from the County Assessor's web site regarding two nearby properties to support the request for a lower valuation of the land component of the Subject Property.
21. The County Board presented the PRF for the Subject Property. The PRFs contain information about the characteristics of the Subject Property and information regarding the qualified sales

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

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

- that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property for each of the tax years at issue.
22. The PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2020. The PRF shows that the prior value of the Subject Property was determined in 2017 and carried forward until 2019.
 23. The County Appraisers stated that a reappraisal was necessary as recent sales indicated that assessed values were too low. The reappraisal indicated that overall values in the area were increasing and the value of the improvements in the area were increasing but the portion of the value attributable to the land components was decreasing.
 24. The County Appraisers stated that the land value as allocated by the County Board was not equalized with other properties but that a further reduction in the overall value of the Subject Property would result in an overall value that would be below actual value and be dis-equalized with other properties.
 25. The County Appraiser stated that if the amount allocated to the land value were reduced the value of the improvements would have to be increased by the same amount to maintain equalization with the total assessed value.
 26. The County Board presented a list of recent valid sales in the Subject Property's market area to support the statements of the County Appraisers.
 27. The Taxpayer has failed to demonstrate that the overall valuation determination made by the County Board was unreasonable or arbitrary.
 28. The Taxpayer has demonstrated that the allocation of value between land and improvements by the County Board was unreasonable and arbitrary.
 29. The Commission therefore finds and determines that the value of the Subject Property for tax year 2020 is \$756,500, with

\$181,700 allocated to the land component and \$ 574,800 allocated to the improvements.

30. 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.
31. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated in part and affirmed in part.

IV. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$181,700
<u>Improvements</u>	<u>\$574,800</u>
Total	\$756,500

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 year 2020.

7. This Decision and Order is effective on May 17, 2023.

Signed and Sealed: May 17, 2023



Steven A. Keetle, Commissioner