

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

DEAN W. ULLERICH,
APPELLANT,

CASE NO: 20R 0409

V.

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

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 140310004.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$381,700 for tax year 2020.
3. Dean W. Ullerich (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 \$360,900 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 June 8, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Dean W. and Constance C. Ullerich was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (the 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 stated that he did not challenge the valuation of the improvements on the Subject Property the Taxpayer only alleged that the assessed value of the land component of the Subject Property was unreasonable or arbitrary.
17. The Taxpayer alleged that the increase in value of the land component of the Subject Property from the prior assessed value was unreasonable or arbitrary.
18. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales 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.
19. The County Appraisers stated that it was determined by the County Assessor's office that land values in the Subject Property's market area were grossly undervalued, and the land values were reassessed for tax year 2020.
20. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2020.

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).

21. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
23. The County Appraisers presented the PRF and sales information for land sales in the market area of the Subject Property and near the assessment date to support the County Assessor's determination of land value for the Subject Property.
24. The Taxpayer alleged the assessed value of the land component of the Subject Property was not equalized with the land component of other comparable properties.
25. The report from the County Board protest proceedings indicates that the County Board adopted the referee coordinator's recommendation that stated, "Equalize with land values at 6807 Country Club Road."
26. The Taxpayer presented the PRF for the property located at 6807 Country Club Road, which indicates that it is a 6.47-acre parcel assessed at \$11,592 per acre. This parcel is classified as agricultural on the PRF.
27. The Subject Property is a 4.97-acre parcel assessed, after County Board action, at \$29,175 per acre. The Subject Property is classified as homesite on the PRF.
28. The Taxpayer presented the PRF for a property adjacent to the Subject Property and between the Subject Property and the 6807 parcel which indicates that it is a 3.333-acre parcel

⁹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁰ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹¹ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

assessed at \$11,701 per acre. This parcel is classified as a primesite on the PRF.

29. The County Appraisers stated that homesite and primesite is the same classification and would be the same as residential lots as well. The County Appraisers stated that a homesite parcel or a primesite parcel would not be comparable to a parcel classified as agricultural.
30. The Taxpayer stated that portions of the Subject Property had been used as pasture for horses in the past but did not present information to show that it had been used for agricultural or horticultural use in the 2020 tax year.
31. "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
32. The Commission finds that the equalized value of the land component of the Subject Property for tax year 2020 is \$11,701 per acre or \$58,200.¹⁴
33. The Commission finds that the equalized value of the Subject Property for tax year 2020 is \$274,100 with a land value of \$58,200 and an improvement value of \$215,900.
34. 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.
35. 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.

¹³ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

¹⁴ \$11,701 per acre x 4.97 acres = \$58,154 rounded to \$58,200.

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	\$ 58,200
<u>Improvements</u>	<u>\$215,900</u>
Total	\$274,100

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 July 14, 2023.

Signed and Sealed: July 14, 2023



Steven A. Keetle, Commissioner