

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

WALT PEFFER,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,

AND

T. L. WHITE,
APPELLEE(S).

CASE NO: 20R 0427

DECISION AND ORDER
REVERSING 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 1233510148.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$811,500 for tax year 2020.
3. T L White (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 \$728,100 for tax year 2020.
5. The County Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on January 10, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.

7. Scott Barnes and Kurt Skradis with the County Assessor's Office (the County Appraisers) were present at the hearing for the County Assessor.
8. Terry L. White was present at the hearing for the Taxpayer.
9. Jennifer Crystal-Clark, Deputy County Attorney was present for the County Board.

II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. The Commission's review of a determination of the County Board of Equalization is de novo.²
12. 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
13. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the

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.

order, decision, determination, or action was unreasonable or arbitrary.⁵

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The County Assessor alleged that the County Board's determination of value for the Subject Property was unreasonable or arbitrary.
18. The report of County Board of Equalization states: "Protest did not receive Coordinator review. The Board of Equalization set the property's 2020 valuation as the same valuation set for the property in 2019."
19. The County Assessor presented the 2020 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, which included the sale 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.

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).

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).

20. The County Assessor presented the Real Estate Transfer Statement (Form 521) for the June 2018 sale of the Subject Property.
21. The PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2020. The prior reappraisal of the market area in which the Subject Property is located was done for tax year 2017.
22. The County Appraiser stated that the assessed value determined by the County Assessor before County Board action of \$811,500 reflected market value for the Subject Property and was equalized with other comparable properties.
23. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
24. 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
25. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
26. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with comparable properties.
27. The Taxpayer presented a letter and tables showing the land valuations in the Subject Property's market area.
28. The tables show that, accounting for negative influences such as a high traffic road or positive locational factors, as the land size increased, the price per square foot decreased, but the total land valuations increased, which is consistent with professionally accepted appraisal techniques.

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

29. “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”¹²
30. The Taxpayer has not shown that the assessed value of the land component of the Subject Property was not equalized with the land component of comparable properties.
31. The Taxpayer alleged that changes in assessed values made after preliminary valuation meetings in January of 2020 were unreasonable and arbitrary and resulted in valuations that were not equalized.
32. The Taxpayer presented tables with information about the values and characteristics of properties located in the Subject Property ‘s market area before and after the January preliminary meetings.
33. The Taxpayer presented tables with information about properties in a different market area adjacent to the Subject Property’s market area.
34. The Taxpayer did not present the PRFs for the properties on the tables. Accordingly, the Commission cannot see the full basis for the determination of assessed value for the properties presented.¹³

¹² Appraisal Institute, *The Appraisal of Real Estate* at 198 (14th ed. 2013)

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 19, 2022, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

35. The information that is contained in the tables indicates that after the preliminary valuation meetings the characteristics of some properties in the Subject Property's market area, such as quality or condition, were changed resulting in differences in assessed value. The tables indicate that the changes did not only occur if a preliminary meeting was held.
36. The Taxpayer did not present information regarding the characteristics of the Subject Property to show that the determination of its characteristics by the County Assessor were arbitrary, unreasonable, or incorrect.
37. The information presented by the Taxpayer shows that differences in valuation between properties in the Subject Property's market area was due to differences in characteristics such as style, age, quality, condition, garages, swimming pools, etc.
38. The information presented regarding properties in a different but adjacent market area show significant differences in the characteristics of the properties between the two market areas such as lot size, square footage, quality, and condition.
39. The Commission cannot find that the properties located in the adjacent market area are comparable to the properties in the Subject Property's market area, including the Subject Property.
40. The Taxpayer has not shown that changes in assessed values made after preliminary valuation meetings in January were unreasonable and arbitrary.
41. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with those of other comparable properties.
42. The Commission finds that the value of the Subject Property for tax year 2020 is \$811,500.
43. The County Assessor 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.

44. The County Assessor 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.

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	\$ 77,200
<u>Improvements</u>	<u>\$734,300</u>
Total	\$811,500

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 December 13, 2023.

Signed and Sealed: December 13, 2023



Steven A. Keetle, Commissioner