BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

	CASE NO: 20R 0442
BRIAN R. BERRY, APPELLANT, V. DOUGLAS COUNTY BOARD OF EQUALIZATION, APPELLEE.	DECISION AND ORDER AFFIRMING THE DECISION OF THE DOUGLAS COUNTY BOARD OF EQUALIZATION CASE NO: 22R 0634 DECISION AND ORDER REVERSING THE DECISION OF THE DOUGLAS COUNTY BOARD OF EQUALIZATION

For the Appellant:
Brian R. Berry,
Pro Se

For the Appellee:
Jennifer Chrystal-Clark,
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 residential parcel located at 825 N 132nd Avenue, Omaha, Douglas County, Nebraska. The legal description and Property Record Files (PRF) of the Subject Property are found at Exhibits 3 and 18 respectively.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined the assessed value of the Subject Property was $805,200 for tax year 2020.

Brian R. Berry (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board). The County Board determined the taxable value of the Subject Property for tax year 2020 was $805,200.[1]

For tax year 2022, the County Assessor determined the assessed value of the Subject Property was $832,200. Brian R. Berry (the Taxpayer) protested this assessment to the County Board. The County Board determined the taxable value of the Subject Property for tax year 2022 was $832,200.[2]

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated hearing on October 12, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-29 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[3] When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.[4] The first involves a presumption 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

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[1] Exhibit 1.
[2] Exhibit 2.
[3] 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).
[4] *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).
[5] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

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.[6]

The second burden of proof requires that 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.[7] The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[8]

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.[9] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[10]

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[11] 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.[12]

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or

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[6] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.
[7] *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[8] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[9] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[10] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *Omaha Country Club v. Douglas County Bd. of Equal.,* 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[11] 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) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *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).
[12] *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

action appealed from is based.[13] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[14] 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.[15] The Commission's Decision and Order shall include findings of fact and conclusions of law.[16]

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.[17]

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.[18] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[19] Taxable value is the percentage of actual

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[13] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[14] *Id.*
[15] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[16] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[17] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[18] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[19] *Omaha Country Club v. Douglas County Bd. of Equal.,* 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.[20] All real property in Nebraska subject to taxation shall be assessed as of January 1.[21] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[22]

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 Constitution.[23] Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.[24] 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.[25] 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.[26] 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.[27] 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.[28] There

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[20] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[21] See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).
[22] Neb. Rev. Stat. § 77-201(1) (Reissue 2018).
[23] Neb. Const., art. VIII, § 1.
[24] *MAPCO Ammonia Pipeline v. State Bd. of Equal*., 238 Neb. 565, 471 N.W.2d 734 (1991).
[25] *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).
[26] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[27] *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).
[28] *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[29]

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

Testimony of Brian Berry

Brian Berry was the owner of the Subject Property and filed the appeals for both tax years 2020 and 2022.[30] In relation to the tax year 2020 appeal, Berry made five primary assertions relating to: the recommendation made by the Referee at the protest proceeding; Federal Housing Finance Agency (FHFA)[31], Freddie Mac[32], and Zillow[33] home price data; and several alleged comparables.

First, Berry emphasized that the recommendation made by a Referee in the protest process was much lower than the assessment by the County Assessor and lower than the decision of the County Board.[34] Second, Berry asserted that FHFA data indicated that average Nebraska home prices increased by 3.9% and average home prices in Omaha increased by 4.28% from 2019 to 2020.[35] And, finally, Berry offered alleged comparable parcels that were received in evidence as Exhibits 9-14. Regarding these alleged comparable parcels, the Taxpayer highlighted the year-to-year percentages of assessed value increases from the prior tax year to the current tax year.

In relation to the tax year 2022 appeal, Berry made similar assertions and offered similar evidence. He emphasized a recommendation by a Referee in the protest process that was again much lower than the assessment by the County Assessor and the

[29] *Id.* at 673, 94 N.W.2d at 50.
[30] Nothing in the record indicates why no appeal was filed for tax year 2021.
[31] Exhibit 6.
[32] Exhibit 7.
[33] Exhibit 8.
[34] Exhibit 19:1.
[35] See, Exhibit 6.

decision of the County Board.[36] He offered data from Zillow.[37] And he offered alleged comparable parcels that were received in evidence as Exhibits 22-27.

In relation to the appeals for both tax years, Berry asserted the County Assessor's improvement quality rating of Very Good was overstated. Berry asserted the quality rating should have been Good.[38]

For both tax years, Berry also asserted that *Scribante v. Douglas County Bd. of Equalization*[39] dictated that the Subject Property be equalized with similarly situated parcels.[40]

Testimony of Scott Barnes

Scott Barnes was called to testify by the County Board. Barnes was a Senior Residential Appraiser for the County Assessor and held the designation of Residential Evaluation Specialist by the International Association of Assessing Officials (IAAO). He had been employed with the County Assessor since 2012.

Barnes testified to the use of a mass appraisal valuation model as applied to one particular market area to assess the Subject Property and other comparable parcels with two-story residences for both tax years. He explained that the Subject Property was in a market area identified as 22585.[41] He testified the County Assessor does not use FHFA, Freddie Mac, or Zillow data that extends beyond a single market area.

Barnes testified to his belief that the comparables offered by the Taxpayer for tax year 2020 were not comparable to the Subject Property, a two-story residence, as these comparables were either 1.5

[36] Exhibit 2:2.
[37] Exhibit 21.
[38] Exhibit 3:4, Exhibit 18:4.
[39] *Scribante v. Douglas County Bd. of Equalization*, 8 Neb. Ct. App. 25 (1999).
[40] The primary issue in *Scribante* was "whether the subject property was uniformly and proportionately valued when compared to similarly situated residential property."
[41] See, Exhibit 3:4 and Exhibit 18:4.

story homes or ranches, even though they were in the same market area designated 22585.[42]

Barnes testified that for tax year 2020 the land component of the Subject Property had been decreased by 20% for an adjustment identified as "MRA Traffic 70," as shown on Exhibit 17. This resulted in the land component of the Subject Property being assessed at $121,900. The record does not appear to indicate a similar adjustment for "MRA Traffic 70" for tax year 2022.

Regarding the alleged comparable properties offered by the Taxpayer for tax year 2022, Barnes acknowledged the property at Exhibit 22 was "similarly situated" to the Subject Property in that they should both have the same land value per square foot. He also identified four of the alleged comparables as being two-story homes,[43] as is the Subject Property.

Barnes provided explanation for Exhibit 18:11, which listed "All Valid Sales for Subject's Neighborhood." He explained that the most comparable sales were the six two-story sales shown on that listing. He also provided some analysis of the Taxpayer's alleged comparables with Exhibits 15 and 28.

B. Analysis

Referee Recommendations

Berry asserted the Commission should follow the recommendation of the Referee who initially considered each protest in each protest proceeding. A Referee may be contracted by the County Board to conduct protest proceedings and make a formal recommendation to the County Board pursuant to Neb. Rev. Stat. § 77-1502.01. Referees

[42] See, Exhibits 9-14.
[43] See, Exhibits 23, 25, 26, and 27.

recommended changes in tax year 2020 to $671,900[44] and in tax year 2022 to $750,000.[45]

However, the Referee Coordinator disagreed with both of these recommendations.[46] In the Referee Coordinator's recommendation to the County Board for tax year 2020, the Coordinator stated, "Reviewed the owner[']s packet and the referee[']s recommend[ed] value. Reviewed the addresses submitted. Of the five only one was a similar design. This home[']s value per SF is higher per SF than the subject. I recommend no change."

For tax year 2022, the recommendation of the Referee Coordinator to the County Board similarly stated, "Reviewed the owner[']s packet and the referee[']s recommend[ed] value. The subject's value per SF is $180.67. The home at 805 N 132 Av is value[d] at $200.26 per SF. I recommend no change."

Based on this record, we cannot find that the initial recommendation of either Referee is clear and convincing evidence of actual value of the Subject Property for either tax year at issue.

FHA, Freddie Mac, and Zillow Data

Regarding the FHA, Freddie Mac, and Zillow data provided by the Taxpayer for both tax years, we agree with Barnes that such evidence that includes data beyond the scope of the particular market area is less relevant to a determination of actual value of the Subject Property. Therefore, we give such evidence little weight.

Year-to-Year Assessment Increases From Prior Year

Under Nebraska law, comparisons of assessment increases from one year to the next is not an authorized method to determine actual value. Actual value is the market value of real property and its value may be determined using professionally accepted mass appraisal

[44] Exhibit 1:2.
[45] Exhibit 19:1.
[46] Id. It is understood that each of these recommendations were separate actions approximately two years apart in 2022 and 2024.

methods such as a sales comparison approach, an income approach, or a cost approach.[47] A comparison of increases of assessed values from the prior tax year to the current tax year is not a professionally accepted method of mass appraisal.

Similarly Situated Properties

Otherwise in relation to the alleged comparable parcels, the Taxpayer made assertions that the Subject Property was not equalized with similarly situated properties. First, Berry asserted that because the Subject Property had no basement walkout and some of the alleged comparable parcels had basement walkouts but were assessed no value for the walkout this constituted a failure to equalize the Subject Property with those other properties.

We disagree. All the alleged comparable properties in the record that have basement walkouts are treated the same in that there is no value attributed specifically to the walkout.[48] And since the Subject Property has no basement walkout, it also has no value assessed for a walkout. In this respect, the properties are treated the same in their respective assessments.

Two-Story Homes Comparison

Our further equalization review is limited to the evidence for tax year 2022 where the property record files for four other two-story homes were received. After reviewing these assessment records, we find no persuasive evidence that the Subject Property was not appropriately assessed in relation to those properties. For example, the multiplier used to determine a value per square foot for the gross living area ranged from $118.07 to $136.05,[49] with the Subject Property at the low end at $118.41.

Similarly, when comparing the per square foot assessment for finished basement space, Subject Property was assessed at $42.32 per

[47] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[48] See, Exhibits 9:7, 10:6, 11:6, 13:6, 14:7, 24:6, 25:5, 26:6, and 27:6.
[49] See, Exhibits 18:8, 23:6, 25:5, 26:6, and 27:6.

square foot within a range of $42.32 to $43.00. Again, the Subject Property was at the low end of the range. This review indicates that similarly situated properties were treated the same. Based upon this review, we find no persuasive evidence that the assessment of the Subject Property would be entitled to equalization relief.

Land Component Tax Year 2022

Regarding the alleged comparable at Exhibit 22 for tax year 2022, we find that equalization relief is necessary. As noted above, Barnes acknowledged the property at Exhibit 22 was "similarly situated" to the Subject Property in that they should both have the same land value per square foot. Since the land component for the parcel at Exhibit 22 was assessed at $4.76 per square foot[50] and the land component for the Subject Property was assessed at $8.45 per square foot[51] equalized relief is necessary.

On that basis, we find that the land component of the Subject Property for tax year 2022 should be $96,930, multiplying $4.76 per square foot times 20,250 square feet of the land component of the Subject Property.

Quality Rating

Finally, regarding the assertion by the Taxpayer that the quality rating should not have been very good[52] for both years, and instead should have been good,[53] we find there was no evidence

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[50] Exhibit 22:1 indicates a $100,000 assessed value for the land component consisting of 21,000 net square feet. $100,000 / 21,000 = $4.76.

[51] Exhibit 18:3 indicates a $171,175 assessed value for the land component consisting of 20,250 net square feet. $171,175 / 20,250 = $8.45.

[52] "Residences at Very Good Quality are typical of those built-in high-quality tracts or developments and are frequently individually designed. Attention has been given to interior refinements and detail. Exteriors have good fenestration with some custom ornamentation." Marshall & Swift, *Residential Cost Handbook* VG-1 (Dec. 2021).

[53] "Residences of Good Quality may be mass produced in above-average residential developments or built for an individual owner. Good-quality standard materials are used throughout. These houses generally exceed the minimum construction requirements of lending institutions, mortgage-insuring agencies and building codes. Some attention is given to architectural design in both refinements and detail. Interiors are well finished, usually having some good-quality wallpaper or wood paneling. Exteriors have good fenestration with

received to support that conclusion. Since neither the Taxpayer nor the County Assessor initiated conducting an internal inspection at any relevant time, any quality rating by the County Assessor would have been made based on prior property record file notes and an exterior inspection at the time of the 2020 and 2022 assessments. Those assessments are presumed to be correct unless evidence is received to rebut those conclusions.

Independent Fee Appraisal

For the sake of completeness, the Commission also notes that no independent fee appraisal was offered into evidence.

VI. CONCLUSION

For tax year 2020, the Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. For the reasons set forth above, the determination of the County Board should be affirmed.

For tax year 2022, the Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or

ornamental materials or other refinements." Marshall & Swift, *Residential Cost Handbook* Good-1 (Dec. 2021).

unreasonable. For the reasons set forth above, the determination of the County Board should be vacated and reversed.[54]

VII. ORDER

IT IS ORDERED THAT:

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

Land	**$121,900**
Improvements	**$683,300**
Total	**$805,200**

3. The decision of the County Board determining the taxable value of the Subject Property for tax year 2022 is vacated and reversed.
4. The taxable value of the Subject Property for tax year 2022 is:

Land	**$ 96,390**
Improvements	**$661,000**
Total	**$757,390**

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2020 and 2022.

[54] Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

9. This Decision and Order is effective for purposes of appeal on November 16, 2026.[55]

Signed and Sealed: November 16, 2026

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

[55] 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.