

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

MICHAEL HANUS
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20R 0455

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

CASE NOS: 21A 0976

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

I. BACKGROUND

1. The Subject Property consists of an improved agricultural parcel in Douglas County, parcel number 100970003.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$348,300 for tax year 2020 and \$242,580 for tax year 2021.
3. Michael Hanus (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$348,300 for tax year 2020 and \$242,580 for tax year 2021.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

6. A Single Commissioner hearing was held on August 23, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Hanus was present at the hearing for the Taxpayer.
8. Scott Barnes, Matt Holly, 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

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.

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
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 Subject Property is being used for agricultural or horticultural purposes and should be granted special valuation status for tax years 2020 and 2021.
17. The County Board presented the 2020 and 2021 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.
18. The County Appraisers stated that the market area in which the Subject property is located was reappraised for tax year 2020.

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).

19. The Subject Property is located in a rural area in northwest Douglas County and is improved with a 3,008 square foot two-story house and outbuildings.
20. The County Appraisers stated that the Subject Property was granted special valuation status for tax year 2021 and the land valuation of \$69,280 reflected special valuation.
21. The County Appraisers further stated that in their opinion the Subject Property should have been granted special valuation for tax year 2020.
22. The 2020 Property Record File (PRF) offered by the County Board for the Subject Property calculated the value of the land component of the Subject Property at \$65,080 as if it were granted special valuation status for the 2020 assessment.
23. The Taxpayer alleged that the size of the homesite acre and outbuilding acres were incorrect.
24. The Taxpayer discussed the improvements on the Subject Property and presented an aerial photograph of the Subject Property but did not present information to quantify a different measurement of the size of the homesite or outbuilding acres on the Subject Property.
25. The Taxpayer alleged that the value of the homesite acre was not equalized with other comparable properties.
26. The Taxpayer did not present any information that showed a different valuation for a homesite acre.
27. The Taxpayer presented a PRF for one property located in the City of Omaha and on the far eastern end of the county (the Cedar Street Property).
28. The Taxpayer presented information from the County Assessor's web site regarding other properties located throughout the county.
29. The Taxpayer did not present the PRFs for these other properties located throughout the county. Accordingly, the Commission cannot see the basis for the determination of

assessed value of the land component of the properties presented by the Taxpayer.⁹

30. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
31. The land component of the Subject Property is not comparable to the land Component of the Cedar Street Property.
32. The Commission cannot find that the land components of the other properties for which the Taxpayer did not present PRF's are comparable to the Subject Property.
33. The Commission finds that the assessed value of the land components of the Subject Property is \$65,080 for tax year 2020 and \$69,280 for tax year 2021.
34. The Taxpayer alleged that the value of the two-story house located on the Subject Property should be reduced due to its condition.
35. The Taxpayer presented photographs of the exterior of the two-story house located on the Subject Property.
36. The PRF for the Subject Property indicated that the two-story house was given a condition rating of poor.
37. The Taxpayer did not present information to show that the determination of condition made by the County Assessor's office was unreasonable or arbitrary.
38. The Taxpayer alleged that the value of the improvements on the Subject Property were not equalized with the value of improvements on other comparable properties.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 8, 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.*

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

39. As noted previously, comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
40. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹²
41. The PRF for the Cedar Street Property shows that it is a different age, style, quality, and condition than the Subject Property, The Cedar Street Property is also located far from the Subject Property and has different amenities.
42. The Cedar Street Property is not comparable to the Subject Property.
43. The Taxpayer presented information from the County Assessor’s web site regarding other properties.
44. The Taxpayer did not present the PRFs for these other properties presented. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹³
45. The Commission cannot find that the properties presented by the Taxpayer are comparable to the Subject Property.

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 8, 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.*

46. However, the information from the County Assessors web site presented by the Taxpayer shows that the other properties have significant differences in characteristics from the Subject Property.
47. The Taxpayer has not shown that the value of the improvements on the Subject Property are not equalized with other properties in the county.
48. For tax year 2020 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.
49. For tax year 2020 the Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.
50. For tax year 2021 the Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
51. For tax year 2021 the Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

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 decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2021 is affirmed.

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

Land	\$ 65,080
<u>Improvements</u>	<u>\$173,300</u>
Total	\$238,380

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

Land	\$ 69,280
<u>Improvements</u>	<u>\$173,300</u>
Total	\$242,580

5. 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).
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 2021.
9. This Decision and Order is effective on June 6, 2023.

Signed and Sealed: June 6, 2023



Steven A. Keetle, Commissioner