

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

MICHAEL E. HART,  
APPELLANT,

CASE NO: 20R 0531

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

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 537790035.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$556,700 for tax year 2020.
3. Michael E. Hart (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 \$556,700 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 September 14, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Hart 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

---

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

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

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 3,523 square foot one and one-half story residence built in 1992 with a quality rating of very good and a condition rating of average.
17. The Taxpayer alleged that the assessed value of the improvements on the Subject Property were not equalized with other comparable properties.
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 Taxpayer presented information from the County Assessor's web site for six other properties in the same subdivision as the Subject Property.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>

---

<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

21. “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.”<sup>10</sup>
22. The Taxpayer did not present the PRFs for the properties listed on the table of assessed values. Accordingly, the Commission cannot see the basis for the determination of assessed value for the improvements on these properties presented by the Taxpayer or compare their characteristics to the characteristics of the improvements on the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the improvements on these properties contained in the Taxpayers chart to the improvements on the Subject Property.<sup>11</sup>
23. The information presented by the Taxpayer show that there are differences in the characteristics between the improvements on the properties offered by the Taxpayer and the improvements on the Subject Property such as quality of construction, age, and amenities such as garages, porches, decks, basement square footage, and swimming pools.
24. The County Appraisers stated that the differences in assessed value between the Subject Property and the properties presented appear to be due to differences in characteristics, but they could not determine the value of these differences without the PRF for all of the properties.
25. With the information before it the Commission cannot determine that the improvements on the properties presented

---

<sup>10</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 29, 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.*

- are comparable to the improvements on the Subject Property or the adjustments that could be made to make them comparable.
26. The Taxpayer alleged the assessed value of the land component of the Subject Property was not equalized with the land component of the other properties in the same subdivision.
  27. The land valuation information for the Subject Property and the six properties presented by the Taxpayer indicate that the Subject Property has the highest overall land valuation of the properties presented.
  28. The information from the County Assessor's web site indicates that the Subject Property and the property directly next door to the Subject Property have a 1.6 "View" factor applied to the land valuations.<sup>12</sup>
  29. The County Appraisers stated that land valuations in the market area were determined using a price per square foot, accounting for economies of scale, and the application of the 1.6 view factor.
  30. Valuing lots using economies of scale is consistent with professional appraisal methodology which holds "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."<sup>13</sup>
  31. The Taxpayer presented photographs taken from the back of the Subject Property showing a view of the woods between the

---

<sup>12</sup> There is no indication on the PRF that these two properties have a superior view than any other properties in the market area/subdivision or that a view factor was applied to the land valuation of either of these properties.

<sup>13</sup> Appraisal Institute, *The Appraisal of Real Estate* at 198 (14th ed. 2013)

- Subject Property and the lake. The Taxpayer stated that he did not have a view of the lake from the Subject Property.
32. The County Appraisers stated that the view factor was applied based on a paired sales analysis using the location of the Subject Property in relation to the lake as well as the view of the woods behind the Subject Property with only the lake beyond the woods.
  33. The County Board presented a map showing the positions of the Subject Property and the other properties presented by the Taxpayer showing their positions relative to the lake to support the application of the view factor.
  34. A review of the per square foot land valuations after the removal of the view factor shows the per square foot values are not consistent with the principle of economies of scale as the per square foot land values increase as the size of the lot increases and the values of the two largest lots being lower than the rest but also increasing as the size of the lot increases.
  35. A review of the per square foot land valuations after the removal of the view factor shows that the Subject Property has the second highest per square foot valuation of the parcels presented but is the median parcel of the parcels presented based on size.
  36. Based on the information provided the land assessments in the Subject Property's market area are not being applied uniformly and proportionally.
  37. 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.<sup>14</sup>
  38. "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."<sup>15</sup>
  39. Based on the information presented to the Commission the land component of the Subject Property, as the median property in

---

<sup>14</sup> *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 63, 425 N.W.2d 320, 322-23 (1988).

<sup>15</sup> *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

terms of size, should be valued using the median of the per square foot land values presented.

40. The Commission finds that the assessed value of the land component of the Subject Property for tax year 2020 is \$122,700,<sup>16</sup> which when added to the improvement value of \$422,700 would result in a total assessed value of \$545,400.
41. 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.
42. 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.

#### **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	\$122,700
<u>Improvements</u>	<u>\$422,700</u>
Total	\$545,400
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.

---

<sup>16</sup> 19,1070 sq.ft.(Subject Property lots size) x \$4.00 psf (median value) x 1.6 (view factor) = \$122,700 (rounded)

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 September 8, 2023.

Signed and Sealed: September 8, 2023



---

Steven A. Keetle, Commissioner