

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

MERLE W. RAMBO
APPELLANT,

CASE NOS: 20R 0621 &
20R 0622

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property in Case No. 20R 0621 consists of an improved residential parcel in Douglas County, parcel number 2132147000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 20R 0621 at \$619,900.
3. Merle W. Rambo (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 in Case No. 20R 0621 was \$619,900.
5. The Subject Property in Case No. 20R 0622 consists of an improved residential parcel in Douglas County, parcel number 2129790000.
6. The County Assessor assessed the Subject Property in Case No. 20R 0622 at \$200,700.
7. Facilities Cost Management Group, LLC (The Taxpayer) protested this value to the County Board.
8. The County Board determined that the taxable value of the Subject Property in Case No. 20R 0622 was \$200,700.

9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on November 5, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
11. Merle Rambo was present, individually and in his capacity as a Member of Facilities Cost Management Group, LLC, at the hearing for the Taxpayers.
12. Scott Barnes with the County Assessor's Office (County Appraiser) was present for the County Board.

II. APPLICABLE LAW

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
14. The Commission's review of a determination of the County Board of Equalization is de novo.²
15. 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

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).

unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
18. 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
19. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

20. The Subject Property in Case No. 20R 0621 is improved with a 5,768 square foot multi-level residence built in 1953 (the Multi-Level Parcel)
21. The Subject Property in Case No. 20r 0622 is improved with a 1,411 square foot ranch style residence built in 1954 (the Ranch Parcel)
22. For the Multi-Level parcel, the Taxpayer alleges that the land value of the Multi-Level parcel is not equalized with other comparable parcels.

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).

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).

23. The Taxpayer presented information from the assessor's web site regarding the Multi-Level parcel and two additional parcels from an adjoining subdivision.
24. The Taxpayer requested a value for the land component of the Multi-Level Parcel that was determined by averaging the per square foot assessed values of the land component of two properties in an adjoining subdivision, multiplying that per square foot value by 108%, and then applying that value per square foot to the Subject Property's land component. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.⁹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
25. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments[.]"¹⁰
26. The County board presented the Property Record File (PRF) for the Multi-Level Parcel as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Multi-Level Parcel, to support the per square foot assessed value of the Multi-Level Parcel and the other properties presented.
27. The County Appraiser stated that the two properties in the adjoining subdivision are located in a different market area from

⁹ See, Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁰ The Appraisal of Real Estate, Appraisal Institute, at 308 (13th ed. 2008).

the Multi-Level Parcel and are valued using a different land valuation model that takes into account different sales and characteristics. The County Appraiser further stated that land component of the Multi-Level Parcel is a rectangular shape while the land component of the two properties in the adjoining subdivision are unusual shapes.

28. For the Ranch Parcel the Taxpayer alleges that the value of the improvements on the Ranch Parcel is not equalized with other comparable parcels on a per square foot basis.
29. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹¹
30. The Taxpayer presented information from the County Assessor’s web site regarding the Ranch Parcel and four properties located near the Ranch Parcel. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
31. The County Board presented the PRF for the Ranch Parcel. The PRF contains information about the characteristics of the Ranch Parcel and information regarding the qualified sales that occurred in the economic area of the Ranch Parcel. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Ranch Parcel.
32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
33. “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

¹¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

more like the subject, its price is brought closer to the subject's unknown value.”¹³

34. The information presented by the Taxpayer demonstrates that the properties presented are different than the Ranch Parcel. The two parcels offered as comparable properties do not have fireplaces and basements, unlike the Subject Property; one is built on a slab, and one has a crawl space. The properties offered as a reference parcels have basements but no basement finish. Without the PRF for the comparable properties or the reference properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.¹⁴
35. Based on the information presented to the Commission, the properties presented by the Taxpayer are not comparable to the Subject Property.
36. The Taxpayer has not demonstrated that the assessed valuation of the Ranch Parcel and similarly situated property are at materially different levels.
37. 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.
38. 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.

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on April 2, 2021 (amended on September 27, 2021, as to date of hearing only), 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.*

IV. ORDER

IT IS ORDERED THAT:

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

Case No. 20R 0621

Land	\$205,500
<u>Improvements</u>	<u>\$414,400</u>
Total	\$619,900

Case No. 20R 0622

Land	\$ 50,000
<u>Improvements</u>	<u>\$150,700</u>
Total	\$200,700

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 February 8, 2023.

Signed and Sealed: February 8, 2023



Steven A. Keetle, Commissioner