

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

PHILLIP J. GLASSMAN
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 20R 0650, & 20R
0651

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

CASE NOS: 20R 0649, 20R
0652, 21R 0743, 21R 0744, &
21R 0745

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

I. BACKGROUND

Case Nos. 20R 049 & 21R 0745

1. The Subject Property in Cases No. 20R 0649 & 21R 0745 consists of an improved residential parcel in Douglas County, parcel number 0238290004.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$510,600 for tax year 2020 and \$530,600 for tax year 2021.
3. Phillip J. Glassman (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 \$510,600 for tax year 2020 and \$530,600 for tax year 2021.

Case Nos 20R 0650 & 21R 0743

5. The Subject Property in Cases No. 20R 0650 & 21R 0743 consists of an unimproved residential parcel in Douglas County, parcel number 0238390004.
6. The County Assessor assessed the Subject Property at \$288,400 for tax years 2020 and 2021.
7. The Taxpayer protested these values to the County Board.
8. The County Board determined that the taxable value of the Subject Property was \$288,400 for tax years 2020 and 2021.

Case Nos 20R 0651 & 21R 0744

9. The Subject Property in Cases No. 20R 0651 & 21R 0744 consists of an improved residential parcel in Douglas County, parcel number 0238290002.
10. The County Assessor assessed the Subject Property at \$74,200 for tax years 2020 and 2021.
11. The Taxpayer protested these values to the County Board.
12. The County Board determined that the taxable value of the Subject Property was \$74,200 for tax years 2020 and 2021.

Case No. 20R 0652

13. The Subject Property in Case No. 20R 0652 consists of an unimproved residential parcel in Douglas County, parcel number 0238390002.
14. The County Assessor assessed the Subject Property at \$2,200 for tax year 2020.
15. The Taxpayer protested this value to the County Board.
16. The County Board determined that the taxable value of the Subject Property was \$2,200 for tax year 2020.

17. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
18. A consolidated Single Commissioner hearing was held on November 17, 2022, at Omaha State Office Building, 1313 Farnam, Room 222, Omaha, Nebraska, before Commissioner Steven Keetle.
19. Phillip and Jerrie Glassman were present at the hearing for the Taxpayer.
20. Scott Barnes and Kurt Skradis with the County Assessor's Office (the County Appraisers) were present for the County Board.

II. APPLICABLE LAW

21. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
22. The Commission's review of a determination of the County Board of Equalization is de novo.²
23. 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

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).

evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

24. 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
25. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
26. 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
27. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

28. The Subject Properties are four contiguous rural residential parcels, two of the parcels contain improvements (a house and an outbuilding) but the Taxpayer did not contest the assessments of the improvements but rather only the assessed values of the land components were at issue in these appeals.
29. The County Appraisers stated that the assessed value of the parcel in Case No. 20R 0652 was incorrect and that the value should be \$100 for tax year 2020.
30. The Taxpayer agreed with the revised value of the Subject Property in Case No. 20R 0652.

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).

31. The Commission finds that the value of the Property in Case No. 20R 0652 is \$100 for tax year 2020.
32. The Taxpayer argued that the Subject Property should be valued as agricultural or horticultural land.
33. The Taxpayer stated that the Subject Property was treed acres and waste acres and was sometimes used for horses.
34. Agricultural or horticultural land is land primarily used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.⁹
35. The Taxpayer did not demonstrate that the Subject Property was primarily used for the commercial production of any plant or animal product.
36. The land component of the Subject Property is not agricultural or horticultural land.
37. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessment year was unreasonable or arbitrary.
38. The County Board presented the 2020 and 2021 PRF for each of the Subject Properties.¹⁰ The PRFs 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 of the rural residential land and the value attributed to each of the characteristics of residential properties in the area, including the Subject Property for each of the tax years at issue.
39. The PRF indicates that the market area in which the Subject Properties are located was reappraised for tax year 2020 which included a review of land values.

⁹ Neb. Rev. Stat. § 77-1359 (Reissue 2018).

¹⁰ With the exception of the parcel in Case No. 20R 0652 for which the County Appraisers and the Taxpayer agreed on a value at the hearing.

40. The assessed value for real property may be different from year to year according to the circumstances.¹¹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹² Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹³
41. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹⁴
42. The Taxpayer alleged that the topography and culverts along the western edge of the Subject Properties reduced their value.
43. The Taxpayer presented an Omaha Sewer Network map and discussed the topography along the western edge of the Subject Property including culverts and access.
44. The Taxpayer did not present information to allow the Commission to quantify the impact, if any, of the topography along the western edge of the Subject Property including culverts and access.
45. The Taxpayers alleged that the assessed values of the Subject Property were not equalized with those of other comparable properties.
46. The County Appraisers discussed the sales presented with the PRF for the Subject Properties and the valuation of rural residential land in the area of the Subject Properties.
47. The Taxpayer presented a separate table of alleged comparable properties for each of the three remaining properties. On each of the tables presented by the Taxpayer were at least one property that recently sold.
48. The Taxpayer presented either a PRF or information from the County Assessor's web site regarding each of the properties on the tables.

¹¹ *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).

¹² *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).

¹³ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹⁴ Neb. Rev. Stat §77-1301(Reissue 2018)

49. The sold properties presented by the County Board and the sold properties presented by the Taxpayer support a valuation model used by the County Assessor's office that valued rural residential parcels in the area of the Subject Property over five acres in size at \$32,000 for the home site acre classified as Homesite and \$12,000 for the additional acres classified at Marketline.
50. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵
51. "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."¹⁶
52. All of the properties that the Taxpayer provided information from the County Assessor's web site are valued at a lower amount per acre than the Subject Properties but have a characteristic that the Subject Properties do not have, such as agricultural or horticultural use, location in a flood plain, prohibitive easement, etc. The Commission cannot find that any of the parcels presented by the Taxpayer for which no PRF was provided are comparable to the Subject Properties.
53. Of the remaining parcels presented by the Taxpayer all but two have a characteristic that makes them different than the Subject Properties, such as size, a restrictive easement, or excessively steep topography that would make them not comparable to the Subject Property.
54. There were two other properties presented, one on North 47th Street and one on McKinley Street, that were rural residential parcels over five acres in size with acres classified as Marketline, the same classification found on each of the Subject

¹⁵ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁶ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

Properties. The parcel on North 47th Street is also improved with a residence and has an acre classified as Homesite as does the Subject Property in Case No. 20R 0649 and 21R 0745.

55. The 2020 and 2021 PRF for the Subject Property in Case No. 20R 0649 and 21R 0745 shows that in 2020 its Homesite acre was assessed at \$12,000 and in 2021 its Homesite acre was assessed at \$32,000. No explanation was given for the \$12,000 assessment, rather than the \$32,000 suggested by the model for tax year 2020.
56. The 2020 and 2021 PRF for the North 47th Street property show that its Homesite acre was valued at \$0 for both tax years even though there was a residence on the property that was being assessed. No explanation was given for the \$0 assessment, rather than the \$32,000 suggested by the model for tax year 2020 and 2021.
57. “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.”¹⁷
58. The Commission finds that the equalized value of the Homesite acre on the Subject Property in Case No. 20R 0649 and 21R 0745 for tax years 2020 and 2021 is \$0 per acre.
59. For tax year 2020 the PRF for the Subject Property, the North 47th Street Property, and the McKinley Street Property all show that their acres classified as Marketline are valued at \$12,000 per acre.
60. For tax year 2021 the PRF for the Subject Property and the North 47th Street Property show that their acres classified as Marketline are valued at \$12,000 per acre.
61. For tax year 2021 the PRF of the McKinley Street property shows that its acres classified as Marketline are valued at \$2,344 per acre.

¹⁷ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

62. The McKinley Street property was originally assessed at \$12,000 for tax year 2021 but its value was reduced by the County Board for tax year 2021 to its value prior to the 2020 reappraisal by the County Assessor, or 19.5% of its initial assessed value.¹⁸
63. The McKinley Street property is shown in the aerial photographs of the Subject Properties presented by the Taxpayer as it is separated from the Subject Properties by a single parcel.
64. The Taxpayer discussed the similarities of the topography and other characteristics of the Subject Properties and the McKinley Street Property.
65. The Commission finds that the Subject Properties and the McKinley Street Property are comparable properties.
66. In *Zabawa v. Douglas County Board of Equalization*, the Nebraska Court of Appeals held that “By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.” The Court determined that the remedy was to reduce the assessed valuation of Zabawa’s property to the same percentage of value as that of the comparable property.¹⁹
67. The Commission finds that the equalized value of the Marketline acres on the Subject Properties for tax year 2021 is \$2,344 per acre.
68. Based on the information presented the Commission finds that the equalized value of the land component in Case Nos. 20R

¹⁸ The McKinley Street property is unimproved and only has Marketline rural residential acres.

¹⁹ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

- 0649 and 21R 0745 is \$59,400²⁰ for tax year 2020 and \$11,600²¹ for tax year 2021.
69. Based on the information presented the Commission finds that the equalized value of the land component in Case Nos. 20R 0650 and 21R 0743 is \$288,400²² for tax year 2020 and \$56,300²³ for tax year 2021.
70. Based on the information presented the Commission finds that the equalized value of the land component in Case Nos. 20R 0651 and 21R 0744 is \$61,800²⁴ for tax year 2020 and \$12,100²⁵ for tax year 2021.
71. Based on the information presented the Commission finds that the value of the land component in Case Nos. 20R 0652 is \$100 for tax year 2020.
72. In Case Nos. 20R 650 and 20R 0651 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.
73. In Case Nos. 20R 650 and 20R 0651 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 vacated.
74. In Case Nos. 20R 649, 20R 0652, 21R 0743, 21R 0744 and 21R 0745 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.
75. In Case Nos. 20R 649, 20R 0652, 21R 0743, 21R 0744 and 21R 0745 the Taxpayer has adduced clear and convincing evidence

²⁰ 1.00 AC (Homesite) x \$0	= \$	0
4.95 AC (Marketline) x \$12,000	=	<u>\$59,400</u>
Total		\$59,400
²¹ 1.00 AC (Homesite) x \$0	= \$	0
4.95 AC (Marketline) x \$2,344	=	<u>\$11,603</u>
Total		\$11,600 (rounded)
²² 24.03 AC (Marketline) x \$12,000	=	<u>\$288,400</u> (rounded)
²³ 24.03 AC (Marketline) x \$2,344	=	<u>\$56,300</u> (rounded)
²⁴ 5.15 AC (Marketline) x \$12,000	=	<u>\$61,800</u>
²⁵ 5.15 AC (Marketline) x \$2,344	=	<u>\$12,100</u> (rounded)

that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 20R 650 and 20R 0651 for tax year 2020 are affirmed.
2. The decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 20R 649, 20R 0652, 21R 0743, 21R 0744 and 21R 0745 for tax years 2020 and 2021 are vacated and reversed.
3. The taxable value of the Subject Property in Case No. 20R 0649 for tax year 2020 is:

Land	\$ 59,400
<u>Improvements</u>	<u>\$439,200</u>
Total	\$498,600

4. The taxable value of the Subject Property in Case No. 21R 0745 for tax year 2021 is:

Land	\$ 11,600
<u>Improvements</u>	<u>\$439,200</u>
Total	\$450,800

5. The taxable value of the Subject Property in Case No. 20R 0650 for tax year 2020 is:

<u>Land</u>	<u>\$288,400</u>
Total	\$288,400

6. The taxable value of the Subject Property in Case No. 21R 0743 for tax year 2021 is:

<u>Land</u>	<u>\$56,300</u>
Total	\$56,300

7. The taxable value of the Subject Property in Case No. 20R 0651 for tax year 2020 is:

Land	\$61,800
<u>Improvements</u>	<u>\$12,400</u>
Total	\$74,200

8. The taxable value of the Subject Property in Case No. 21R 0744 for tax year 2021 is:

Land	\$12,100
<u>Improvements</u>	<u>\$12,400</u>
Total	\$24,500

9. The taxable value of the Subject Property in Case No. 20R 0652 for tax year 2020 is:

<u>Land</u>	<u>\$100</u>
Total	\$100

10. 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).
11. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
12. Each party is to bear its own costs in this proceeding.
13. This Decision and Order shall only be applicable to tax years 2020 and 2021.
14. This Decision and Order is effective on October 11, 2023.

Signed and Sealed: October 11, 2023



Steven A. Keetle, Commissioner