

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

BRENT E. LUNDGREN  
APPELLANT,

CASE NOS: 21R 0192,  
22R 0247

V.

WASHINGTON COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

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

**For the Appellant:**  
Brent E. Lundgren,  
Pro Se

**For the Appellee:**  
W. Thomas Brantley  
Deputy 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 2.98 acre rural residential parcel improved with a 2,602 square foot home built in 2019 and located at 4644 Steavenson Loop in Washington County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 10.

## II. PROCEDURAL HISTORY

The Washington County Assessor determined that the assessed value of the Subject Property was \$487,575 for tax year 2021. Brent E. Lundgren (the Taxpayer) protested this assessment to the Washington County Board of Equalization (the County Board) and requested a taxable value of \$442,817. The County Board determined the taxable value of the Subject Property for tax year 2021 was \$481,565.<sup>1</sup>

For tax year 2022, the County Assessor determined that the assessed value of the Subject Property was \$516,635. The Taxpayer protested this assessment to the County Board and requested a taxable value of \$477,856. The County Board determined the taxable value of the Subject Property for tax year 2022 was \$516,635.<sup>2</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on March 1, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1 to 10 were admitted into evidence. Exhibits 11 and 12 were not admitted into evidence because they were objected to as not being timely filed.

## III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an

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<sup>1</sup> Exhibit 1:1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> 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).

assessment and has acted upon sufficient competent evidence to justify its action.<sup>4</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>5</sup>

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>8</sup> 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.<sup>9</sup>

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears

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<sup>4</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</sup> 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); *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).

<sup>9</sup> *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

an appeal or cross appeal.<sup>10</sup> 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.<sup>11</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

#### IV. APPLICABLE 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.<sup>13</sup>

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.<sup>14</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>16</sup> All real property in

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<sup>10</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>16</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

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.<sup>19</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>20</sup> 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.<sup>21</sup> 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>22</sup> 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>23</sup> 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.<sup>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

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<sup>17</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

<sup>19</sup> Neb. Const., art. VIII, § 1.

<sup>20</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>21</sup> *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).

<sup>22</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>23</sup> *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).

<sup>24</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

## V. FINDINGS OF FACT

### A. Summary of the Evidence

William Kaiser, a licensed appraiser, and Robin Andreasen, the County Assessor and also a licensed appraiser, testified on behalf of the County Board. Both witnesses testified the County Assessor used the cost approach to value the Subject Property both tax years 2021 and 2022. For tax year 2021, the County Board accepted a recommendation by a Referee,<sup>26</sup> which was agreed to by the County Assessor. The property record file was corrected to show that the house was heated with a forced air gas unit rather than with a heat pump, and the assessed value was changed to reflect that difference.

Kaiser testified that he was the Referee employed by the County Board to review the Taxpayer's protest and appeal. Kaiser reviewed the Taxpayer's appraisal report as well as the Property Record File (PRF) for the Subject Property and found no evidence to show that the County Assessor was incorrect in the assigned quality rating of good+.

Andreasen testified that she did not personally inspect the Subject Property, but other County Assessor personnel made several inspections during the construction of the improvements on the parcel in 2019. Andreasen did note that the Subject Property was not subject to a periodic reappraisal in 2020 or 2021. Ultimately, both Kaiser and Andreasen agreed with the valuation set by the County Board.

Brent Lundgren testified on his own behalf. Lundgren offered an appraisal reported prepared by Brian Harness.<sup>27</sup> This appraisal was performed for financing purposes, with an effective date of February 16, 2021. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is

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<sup>26</sup> See, Neb. Rev. Stat. § 77-1502.01 (Reissue 2018). William Kaiser, a licensed appraiser, was contracted by the County Board to function as the Referee.

<sup>27</sup> Exhibit 5:11-41.

considered competent evidence under Nebraska law.<sup>28</sup> The Harness Appraisal conformed to the Uniform Standards of Professional Appraisal Practice (USPAP),<sup>29</sup> therefore the appraisal is competent evidence sufficient to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination.

The Harness Appraisal considered both the sales comparison approach<sup>30</sup> and the cost approach<sup>31</sup> to value. In performing the sales comparison approach, Harness selected three comparable properties. In assessing the quality of construction, Harness selected a quality rating of “Q4” for the Subject Property and one comparable property, with the remaining comparable properties rated as “Q3.”<sup>32</sup> The Harness Appraisal’s Q3 comparables required negative adjustments of \$40,000 to compare with the Subject Property, which demonstrates that the Subject Property’s Q4 rating is of a lower quality than the Q3 comparables. Harness was not called to testify, and therefore no evidence was offered to provide the basis for the quality ratings assigned or the substantial price adjustments used for the comparable properties. Additionally, the Taxpayer did not provide the Property Record Files (PRF) for the listed comparable properties. Without the PRF for each comparable property or the reference properties, the Commission is unable to determine the basis for the adjustments applied to make the Q3 properties comparable to the Subject Property, which the appraiser rated at Q4.<sup>33</sup>

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<sup>28</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

<sup>29</sup> Exhibit 5: 17.

<sup>30</sup> Exhibit 5:14.

<sup>31</sup> Exhibit 5:15.

<sup>32</sup> Exhibit 5:14.

<sup>33</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 9, 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.*

The Harness Appraisal ultimately provided an opinion of value for the Subject Property of \$481,000, effective as of February 16, 2021.<sup>34</sup> No other evidence was offered by the Taxpayer which would quantify the value of the Subject Property.

### **B. Analysis**

The most persuasive evidence of value offered by the Taxpayer is the Harness appraisal report with an opinion of value of \$481,000. However, without the opportunity to elicit the basis of that opinion from the appraiser, including an explanation of the substantial adjustments relating to the subjective Quality rating, we cannot find that the appraisal opinion constitutes clear and convincing evidence that the County Board determinations of taxable value were arbitrary or unreasonable. Based upon the admitted evidence, the County Board relied upon cost approach determinations made by the County Assessor, which were not arbitrary or unreasonable. They were based upon Marshall Valuation Service costing tables and reviewed by at least one licensed appraiser. The Taxpayer offered no evidence that proves otherwise.

Further, the opinion of value given in the Harness appraisal report was only \$565 less than the County Board's determination for tax year 2021, but \$35,000 less than the 2022 assessment. Other than applying information from the Marshall Valuation Service, the County Board did not provide any additional explanation for the \$35,000 increase from 2021 to 2022. However, the Taxpayer did not provide any quantifiable evidence of value other than the Harness appraisal report

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This provision was not altered in the Amended Order for Hearing and Notice issued to the Taxpayer on August 18, 2022, nor the Second Amended Order for Hearing Notice issued on October 11, 2022.

<sup>34</sup> Exhibit 5:14.



to support the argument that the County Board's 2022 value was arbitrary or unreasonable.

## VI. CONCLUSIONS OF LAW

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 determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be affirmed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Washington County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are affirmed.
2. The assessed value of the Subject Property for tax year 2021 is:

<b>Land</b>	<b>\$ 56,500</b>
<b><u>Improvements</u></b>	<b><u>\$ 425,065</u></b>
<b>Total</b>	<b>\$ 481,565</b>

3. The assessed value of the Subject Property for tax year 2022 is:

<b>Land</b>	<b>\$ 56,500</b>
<b><u>Improvements</u></b>	<b><u>\$ 460,135</u></b>
<b>Total</b>	<b>\$ 516,635</b>

4. This Decision and Order, if no appeal is timely filed, shall be certified to the Washington County Treasurer and the Washington County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2021 and 2022.
8. This Decision and Order is effective for purposes of appeal on March 27, 2023.<sup>35</sup>

Signed and Sealed: March 27, 2023

SEAL



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Robert W. Hotz, Commissioner

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James D. Kuhn, Commissioner

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<sup>35</sup> 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.