

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

ROBERT BENES
APPELLANT,

CASE NOS: 21R 0215, 21R
0216, 21R 0217

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Properties consist of three vacant residential parcels in Lancaster County.
2. The Lancaster County Assessor (the County Assessor) assessed the values of the Subject Properties as shown in the table below:

Appeal Number	Parcel ID	Assessed Value
21R 0215	03-04-201-002-000	\$72,000
21R 0216	03-04-201-003-000	\$120,800
21R 0217	03-04-201-004-000	\$143,600

3. Robert Benes (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable values of the Subject Properties should be:

Appeal Number	Parcel ID	Board Value
21R 0215	03-04-201-002-000	\$36,000
21R 0216	03-04-201-003-000	\$81,000
21R 0217	03-04-201-004-000	\$90,000

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 October 17, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. The Taxpayer, Robert Benes, was present at the hearing.
8. Tim Sealock (County Appraiser) was 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
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that 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).

⁴ *Id.* at 283-84.

- 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 County Appraiser and the Taxpayer agreed on a value of \$7,400 for appeal 21R 0215 as the property is being farmed in conjunction with another parcel.
17. 21R 0216 and 21R 0217 are both vacant parcels that were platted as a future development. The Taxpayer stated neither lot may be built upon without a final plat and therefore should be valued closer to agricultural land values.
18. The County Appraiser stated the parcels were platted for future development and are valued as vacant out-lots. The County Appraiser suggested the value be lowered to \$40,500 for each lot as the lots may not be buildable as they currently sit but could be purchased by the adjoining improved parcels or combined together.
19. The Taxpayer did not provide any evidence to show the value placed on the Subject Properties was incorrect. Simply arguing

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).

the value is incorrect does not meet the Taxpayer's burden of proving by clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

20. The County Appraiser provided lower values based on calculations used by the Assessor's office for parcels similar to the Subject Properties.
21. Competent evidence was produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. Clear and convincing evidence was produced that the determinations of the County Board were 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 values of the Subject Properties for tax year 2021 are reversed.
2. The taxable values of the Subject Properties for tax year 2021 are:

Appeal Number	Parcel ID	2021 Value
21R 0215	03-04-201-002-000	\$7,400
21R 0216	03-04-201-003-000	\$40,500
21R 0217	03-04-201-004-000	\$40,500

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2021.

7. This Decision and Order is effective on December 28, 2022.

Signed and Sealed: December 28, 2022

James D. Kuhn, Commissioner

