

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

LISA M. PURCELL,  
APPELLANT,

CASE NO: 21R 0772

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 unimproved rural residential parcel in Douglas County, parcel number 0110170006.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$34,500 for tax year 2021.
3. Lisa M. Purcell (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 \$34,500 for tax year 2021.
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 December 7, 2022, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Don and Lisa Purcell were present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the 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.<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>

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<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 located on the Elkhorn River and is classified as a residential parcel.
17. Prior to 2019 there was a residential improvement on the Subject Property that was significantly damaged in the 2019 flooding.
18. The residential improvement on the Subject Property was demolished prior to the 2021 assessment date.
19. The Taxpayer stated that the sand that had been deposited on the Subject Property in the 2019 flood had been removed as of the assessment date.
20. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
21. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>

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<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> *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).

<sup>10</sup> *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).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
23. The Taxpayer alleged that the assessed value does not take into account the impact the condition of the Subject Property and restrictions on building on the Subject Property have on its value.
24. 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.
25. There are three recent sales of parcels adjoining the Elkhorn River that the County Appraiser stated support the valuation of the Subject Property. The land component of each of these parcels is valued at the same amount as the Subject Property.
26. The County Appraiser stated that unimproved residential lots on the other side of the river across from the Subject Property were selling for approximately \$40,000.
27. The County Appraiser stated that river access and the recreational opportunities that provided contributed to the value of all lots with access to the river.
28. The Taxpayer presented correspondence from the City of Omaha Floodplain Manager which indicated that the improvements on the Subject Property were damaged to such an extent that they were required to be demolished.
29. The Taxpayer also presented correspondence from the City Omaha Floodplain Manager stating that a building permit for residential construction on the Subject Property could not be issued.

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<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

30. The Taxpayer stated that the neighboring property was significantly different in that it has elevations at least six feet higher than the Subject Property
31. The Taxpayer further stated that sold properties presented by the County Board have existing structures on them that may not be allowed to be built under the current floodplain building requirements but that are allowed to remain as pre-existing improvements.
32. The PRF for the Subject Property indicates that the County Assessor's office determined that the Subject Property was a buildable lot for tax year 2021, and that a 20% discount was removed.
33. The Commission finds that the Taxpayer has demonstrated that the Subject Property was not a buildable lot for the 2021 tax year and that the 20% discount should be reinstated.
34. The value of the Subject Property as an unbuildable residential or recreational lot is \$27,600<sup>13</sup> for tax year 2021.
35. The Taxpayer alleged that the Subject property should be classified as agricultural or horticultural land.
36. The Taxpayer stated that the Subject Property is used for gardening.
37. "Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;"<sup>14</sup>
38. "Agricultural or horticultural purposes means 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;"<sup>15</sup>

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<sup>13</sup> \$34,500 - \$6,900 (\$34,500 x 20%) = \$27,600

<sup>14</sup> Neb Rev. Stat §77-1359(1) (Reissue 2018)

<sup>15</sup> Neb Rev. Stat §77-1359(2)(a) (Reissue 2018)

39. The Taxpayer has not demonstrated that the Subject Property is being used for the commercial production of any plant or animal product in a raw or unprocessed state rather than as a personal garden.
40. The Taxpayer has not shown that the Subject Property is lying adjacent to and in common ownership or management with other agricultural land or horticultural land.
41. The Commission cannot find that the Subject Property is agricultural land or horticultural land.
42. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$27,600.
43. 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.
44. 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 and reversed.

#### **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 2021 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$27,600
<u>Improvements</u>	<u>\$ 0</u>
Total	\$27,600

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 2021.
7. This Decision and Order is effective on August 30, 2023.

Signed and Sealed: August 30, 2023



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Steven A. Keetle, Commissioner