

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

WILLIAM H. FLEMING,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 21R 0912,
21R 0921, 22R 0696
& 22R 0697

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

I. BACKGROUND

1. The Subject Properties consist of an improved residential parcel (Case Nos. 21R 0921 & 22R 0696) and the adjoining unimproved residential parcel (Case Nos. 21R 0912 & 22R 0697) in Douglas County, parcel number 0611370410 and 0611370408, respectively.
2. The Douglas County Assessor (the County Assessor) assessed the improved parcel of the Subject Property¹ at \$922,300 for tax year 2021 and \$855,300 for tax year 2022.
3. The Douglas County Assessor (the County Assessor) assessed the unimproved parcel of the Subject Property² at \$83,200 for tax year 2021 and \$115,500 for tax year 2020.
4. William H. Fleming (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
5. The County Board determined that the taxable value of the improved parcel of the Subject Property was \$855,300 for tax years 2021 and 2022.

¹ Parcel number 0611370408 (Case Nos. 21R 0921 & 22R 0696).

² Parcel number 0611370410 (Case Nos. 21R 0912 & 22R 0697).

6. The County Board determined that the taxable value of the unimproved parcel of the Subject Property was \$83,200 for tax year 2021 and \$115,500 for tax year 2022.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
8. A Single Commissioner hearing was held on December 9, 2022, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
9. Mark LaPuzza, Attorney, was present at the hearing for the Taxpayer.
10. Scott Barnes and Kurt Skradis with the County Assessor's Office (the County Appraisers) were present for the County Board.

II. APPLICABLE LAW

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.³
12. The Commission's review of a determination of the County Board of Equalization is de novo.⁴
13. 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."⁵ 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

³ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

⁴ 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).

⁵ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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.”⁶

14. 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.⁷
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
16. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹
17. The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁰

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

18. The Subject Properties in these appeals are two adjacent lakefront residential parcels, one improved and one unimproved. The improved parcel (Case Nos. 21R 0921 & 22R 0696) is 0.92 acres and is improved with a 2,785 square foot ranch style residence constructed in 2003. The unimproved parcel (Case Nos. 21R 0912 & 22R 0697) is 0.4391 acres.

⁶ *Id.* at 283-84.

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁹ *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).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Taxpayer alleged that the assessed value of the land component of the Subject Properties was not supported by recent sales and is not equalized with other comparable properties.
20. The County Board presented the 2021 and 2022 Property Record File (PRF) for the unimproved 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.
21. The County Board presented the 2021 PRF for the improved Subject Property. The County Appraisers stated that the value of the improved Subject Property was not reviewed for tax year 2022 but left at the amount determined by the County Board for tax year 2021. 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 for the 2021 assessment. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
22. The County Appraiser stated that there was a review of land values for the market area in which the Subject Properties are located for tax year 2021 and 2022.
23. The County Board presented a list of vacant land sales in the market area in which the Subject Properties are located.
24. The sales prices indicate sales prices higher than the assessed value of the land component of the Subject Properties.
25. The Taxpayer presented information from the County Assessor's web site regarding two vacant residential parcels that the Taxpayer alleged were comparable to the Subject Property.
26. A review of the assessed value of these two properties and the Subject Properties shows that the larger the parcel, the higher

the total assessed value of the parcel, but the lower the per square foot assessed value.

27. This valuation is consistent with professionally accepted appraisal techniques that hold “Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”¹¹
28. The Taxpayer has not shown that the assessed value of the land component of the Subject Properties was not supported by recent sales and is not equalized with other comparable properties.
29. The Taxpayer stated that at the 2021 protest hearing three comparable properties were presented to the referee, but that the referee coordinator did not use the average of these values to determine a value for the Subject Property but rather determined a value based on the highest of the comparable properties.
30. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹² The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹³ The Taxpayer’s requested value was determined by averaging assessed values of other properties. The Taxpayer’s method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.

¹¹ Appraisal Institute, *The Appraisal of Real Estate* at 198 (14th ed. 2013).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

31. “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.”¹⁴
32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵
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 more like the subject, its price is brought closer to the subject’s unknown value.”¹⁶
34. The Taxpayer did not present the PRFs for the properties discussed. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties discussed by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties discussed by the Taxpayer, such as basement square footage, swimming pools, lot size, or decks and patios, to the Subject Property.¹⁷
35. The Commission cannot find that the properties discussed by the Taxpayer are comparable to the Subject Property.

¹⁴ Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

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).

¹⁷ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 5, 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.*

36. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with those of other comparable properties.
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.

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 2021 and 2022 are affirmed.
2. The taxable value of the improved Subject Property in Case Nos 21R 0921 & 22R 0696, parcel number 0611370408, for tax years 2021 and 2022 is:

| | |
|---------------------|------------------|
| Land | \$148,000 |
| <u>Improvements</u> | <u>\$707,300</u> |
| Total | \$855,300 |

3. The taxable value of the unimproved Subject Property in Case No 21R 0912, parcel number 0611370410, for tax year 2021 is:

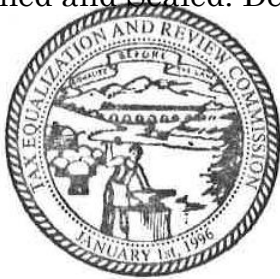
| | |
|-------------|-----------------|
| <u>Land</u> | <u>\$83,200</u> |
| Total | \$83,200 |

4. The taxable value of the unimproved Subject Property in Case No. 22R 0677, parcel number 0611370410, for tax years 2022 is:

| | |
|-------------|------------------|
| <u>Land</u> | <u>\$115,500</u> |
| Total | \$115,500 |

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2021 and 2022.
9. This Decision and Order is effective on December 6, 2023.

Signed and Sealed: December 6, 2023



Steven A. Keetle, Commissioner