

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

TIMOTHY J. COLLITON,
APPELLANT,

CASE NO: 22R 0162

V.

BURT COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE BURT COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Timothy J. Colliton,
Taxpayer

For the Appellee:

Edmond E. Talbot III,
Burt County Attorney

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 1,932 square foot home, located at 800 N. 17th Street in the city of Tekamah, Burt County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 5.

II. PROCEDURAL HISTORY

The Burt County Assessor (the County Assessor) determined the assessed value of the Subject Property was \$511,645 for tax year 2022.¹ Timothy J. Colliton (the Taxpayer) protested this assessment to

¹ Exhibit 4:4.

the Burt County Board of Equalization (the County Board) and requested a taxable value of \$252,105.² The County Board determined the taxable value of the Subject Property for tax year 2022 was \$496,658.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on October 11, 2023. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-10 were admitted into evidence. Exhibit 11 was not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁴ 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 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 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

² Exhibit 1.

³ Exhibit 1.

⁴ 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).

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

to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁶

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰

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 an appeal or cross appeal.¹¹ 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.¹² The Commission's Decision and Order shall include findings of fact and conclusions of law.¹³

⁶ *Id.*

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

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

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

¹¹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹² Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT 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.¹⁴

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.¹⁵ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁶ 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.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

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

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁸ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁹ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

Constitution.²⁰ 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.²¹ 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.²² 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.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Subject Property is a 10.910 acre parcel improved with a 1,932 square-foot single-family house built in 2001.²⁵ The parcel was purchased by the Taxpayer on May 29, 2015, for \$450,000.²⁶

The Subject Property is located on North 17th Street of Tekamah among a total of 12 parcels. Seven of these parcels are improved, and none of the parcels have been recently purchased or sold. North 17th Street provides the only street access to the Subject Property and is maintained by the city of Tekamah.²⁷ The Taxpayer contends the condition of North 17th Street negatively affects the value of the

²⁰ Neb. Const., art. VIII, § 1.

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *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).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

²⁵ Exhibit 5:1-2.

²⁶ Exhibit 5:1.

²⁷ Aerial photographs of the neighborhood and North 17th Street are found at Exhibit 5:12-13.

Subject Property, and that this reduction to the actual value of the Subject Property is not reflected in the 2022 valuation.

The Taxpayer testified that North 17th Street is a one-lane street that is in poor condition and receives inadequate maintenance.²⁸ The Taxpayer referenced circumstances where airplane noise caused a reduction in property value;²⁹ the Taxpayer asserted the same principles should apply to reduce the Subject Property's value based on the condition of the access road.

In essence, the Taxpayer is asserting the street's condition is an external obsolescence³⁰ to the parcel, while conceding that a properly maintained access street would make the assessed value appropriate. The Taxpayer testified that if the road is unmaintained, then the value of the Subject Property is one-half of the assessed value. The Taxpayer offered another opinion of value of \$400,000 for the Subject Property with the street's current condition. The Taxpayer referred to two sold properties as comparables, asserting their sales prices were indicators of the value of the Subject Property.³¹ The Taxpayer did not otherwise quantify the impact of the street's condition on the actual value of the Subject Property.

Katie Hart, Burt County Assessor, testified the Subject Property was inspected on August 4, 2021. The Property Record File (PRF) for the Subject Property was updated on July 15, 2022, adding the detached garage. The County Assessor also stated that no other

²⁸ Exhibit 4:2-3, Exhibit 10:7.

²⁹ The Commission believes the Taxpayer's references were to *Griggs v. Allegheny Cny.*, 369 U.S. 84 (1962) and *United States v. Causby*, 328 U.S. 256 (1946). Both cases held that noise pollution caused by take-off and landing at nearby airport constituted an air easement "taking" under the federal Takings Clause for which just compensation was required. The Commission declines to rule on applying these principles in the immediate case.

³⁰ "A type of depreciation; a diminution in value caused by negative external influences and generally incurable on the part of the owner, landlord, or tenant. The external influence may be either temporary or permanent." Appraisal Institute, *The Dictionary of Real Estate Appraisal* (6th ed. 2015).

³¹ Exhibit 6.

property assessments were lowered based on the conditions of their access roads.

The County Assessor offered nine exhibits, including PRFs for two properties comparable to the Subject Property.³² The County Assessor also offered a report detailing adjustments and differences between the comparables and the Subject Property.³³ The Taxpayer offered a document summarizing his assessment of the conditions of the access roads to the Subject Property and to the two comparable properties presented by the County Assessor.³⁴ Attached to this document were a series of aerial photographs and other photographs of these streets.³⁵

B. Analysis

The Taxpayer's assertion that the condition of the access road significantly devalues the Subject Property due to external obsolescence is without merit. A photograph of the access road demonstrates the street is not one-lane only and that it is maintained with rock or gravel.³⁶ The photograph is undated. While the maintenance at the time of the photograph appears to be minimal or poor, we find it is not evidence to quantify a reduction in value to the Subject Property.

Appellants must quantify a reduction in value pursuant to their burden to prove actual value in appeals before the Commission. The Taxpayer has failed to meet that burden.

The evidence presented by the County Board suggests the assessed value determined by the County Board was supported by sufficient competent evidence. The evidence does not suggest the Subject Property was valued with any different methodology than that used on the comparable properties. In the absence of sufficient evidence to

³² Exhibit 7; Exhibit 8.

³³ Exhibit 6.

³⁴ Exhibit 10:1.

³⁵ Exhibit 10:2-7.

³⁶ Exhibit 10:7.

show the County Board's decision was arbitrary or unreasonable, the County Board's decision should be affirmed.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Burt County Board of Equalization determining the taxable value of the Subject Property for tax year 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$49,854
<u>Improvements</u>	<u>\$446,804</u>
Total	\$496,658

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Burt County Treasurer and the Burt 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 2022.

7. This Decision and Order is effective for purposes of appeal on April 22, 2025.³⁷

Signed and Sealed: April 22, 2025

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

³⁷ 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.