

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

JEFFREY B. AND BETHANY
R. BEIER,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 22R 0700

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2225570428.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$874,100 for tax year 2022.
3. Jeffrey B. and Bethany R. Beier (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 \$874,100 for tax year 2022.
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 April 3, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Mark LaPuzza, attorney, and Jeff Beier 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 1.¹
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 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

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.

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).

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 Subject Property is a 7.65-acre residential parcel improved with a 4,699 square foot two story residence constructed in 1979 and 1,820 square foot barn constructed in 1970.
17. The Taxpayer alleged that the value of the Subject Property should be reduced because it is zoned for agricultural use.
18. The Taxpayer discussed the topography and use of the Subject Property and presented photographs of the land around the driveway into the residence and drainage areas on the Subject Property.
19. The Taxpayer stated that he used the land on the Subject Property to raise horses, goats, chickens, dogs, and cats for household use, the Subject Property is not used for commercial agricultural or horticultural production.
20. The Subject Property does not meet the requirements to be assessed as agricultural or horticultural land.⁹
21. The Taxpayer alleged that the value of the land component of the Subject Property was not equalized with the land component of other comparable properties.
22. The Taxpayer presented the Property Record File (PRF) for the Subject Property and two adjacent properties. Two of these three properties (including the Subject Property) are valued at

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).

⁹ Neb. Rev. Stat §77-1359 (Reissue 2018).

\$36,000 per acre and the remaining parcel is valued at \$30,000 per acre.

23. The County Appraiser stated that the parcel valued at \$30,000 was not comparable to the Subject Property due to its size.
24. The County Appraiser stated that the land valuation model used to value properties in the market area uses a per acre value of \$60,000 per acre. A 40% adjustment was applied to properties between five and ten acres, which included the Subject Property, due to their size resulting in an assessed value of \$36,000 per acre. The County Appraiser stated that properties larger than ten acres in size had a 50% discount applied due to their size resulting in an assessed value of \$30,000 per acre.
25. The Commission finds that the differences in assessed per acre values for the properties presented are due to differences in their characteristics.
26. The Taxpayer has not shown that the value of the land component of the Subject Property was not equalized with the land component of other comparable properties.
27. The Taxpayer presented photographs of portions of the Subject Property including a 100-yard-long gravel driveway and drainage area. The Taxpayer stated that 3.5 acres of the Subject Property can't be accessed due to the terrain.
28. The County Appraiser stated that the size discount applied to larger parcels accounted for the terrain of the Subject Property.
29. The Taxpayer offered no information to allow the Commission to quantify any additional impact on the value of the land component of the Subject Property due to its terrain.
30. The Taxpayer alleged that the value of the improvements on the Subject Property were not equalized with the value of the improvements on comparable properties.
31. The PRF's presented demonstrate that the differences in the assessed value of the improvement on the Subject Property and the two other properties presented are due to differences in age,

quality, condition, and amenities such as out buildings, garages, and swimming pools.

32. The Taxpayer stated that the swimming pool on the Subject Property was broken as of the assessment date.
33. The Taxpayer did not present information regarding the damage to the swimming pool or repair estimates for the pool.
34. The Taxpayer has not demonstrated that the value of the improvements on the Subject Property were not equalized with the value of the improvements on comparable properties.
35. 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.
36. The Taxpayer has not 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 affirmed.

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 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$275,400
<u>Improvements</u>	<u>\$598,700</u>
Total	\$874,100
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 2022.
7. This Decision and Order is effective on May 15, 2024.

Signed and Sealed: May 15, 2024



Steven A. Keetle, Commissioner