

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

GEOFF MCGREGOR
APPELLANT,

CASE NO: 23R 0621

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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 1729720500.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,068,200 for tax year 2023.
3. Geoff McGregor (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 \$1,068,200 for tax year 2023.
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 November 4, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Geoff McGreger was present at the hearing for the Taxpayer.
8. Michael Lunkwitz 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 1.5 story, single-family residence, built in 2021 with 3,774 square feet (SF) above grade, walkout basement area of 3,655 SF with no finish, three full baths and one-half bath, built-in garage with 1,000 SF, and quality and condition ratings of very good. The lot contains 7.61 acres (AC) located near a river.
17. The Taxpayer alleged that land soil issues with the Subject Property lot and equalization issues within the neighborhood, create an arbitrary or unreasonable valuation for the Subject Property.
18. The Taxpayer stated that soil movement within the Subject Property lot has caused foundational issues that had to be remedied once the Subject Property was built. Issues included the buckling of a foundation wall and large settling cracks along the basement floor.
19. The Taxpayer stated that the foundational wall issue was rectified with a buttress wall added in the basement prior to 2023, and the cracking of the floor appears to have stopped or slowed significantly. It was also stated there have not been water issues within the home.
20. The Taxpayer stated that the condition of the soil was investigated prior to purchasing and building on the Subject

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).

Property lot. The testing was completed by Thiele Geotech in August of 2016.

21. The Taxpayer attested that the Subject Property lot was purchased for \$271,300 with the knowledge of what would be necessary to build a home based upon the soil report received. The Subject Property improvements were not built until 2021.
22. The Taxpayer provided a spreadsheet of five properties near the Subject Property (two of which are adjoining parcels), with parcel number, acre size, 2023 land value, and the calculated value per acre. The Taxpayer noted that parcel 109780017 with 3.55 AC valued at \$199,400 was removed from the overall analysis due to lack of perceived comparability with the Subject Property. The remaining parcel's average price per acre was calculated to be \$21,669.59 and then given a negative adjustment by the Taxpayer of \$5,000 to account for lack of city maintenance of the street.
23. The Taxpayer also provided a spreadsheet for an equalization comparison of improvement values between the Subject Property and 16 chosen properties on the Subject Property's street. The analysis showed parcel number, square feet, 2023 improvement value, value per square foot, and noted that the highest price per square foot as well as the lowest were removed from the overall calculation as outliers. The remaining parcel's price per square foot calculations were averaged together to aid in a requested improvement value of \$629,225.66.
24. The Taxpayer did not provide the Property Record Files (PRF) for any of the properties presented for land value or equalization purposes. Without the details contained in the PRFs, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property and that the

data presented is correct for each.⁹

25. The Appraiser stated that the properties provided by the Taxpayer for comparison of land value may not be located in the same Land Economic Area as assigned by the assessor's office and indicated on the first page of the PRF. The Appraiser attested that land value is set using multiple regression analysis from sales and data located in the assigned LEA for the Subject Property using generally accepted mass appraisal methods.
26. The Appraiser attested that the Subject Property improvement value is set using the cost approach since it is a newer construction property but is also impacted by neighborhood sales analysis showing a neighborhood adjustment of 0.8796 (reduction of approximately 12%) as indicated on page 3 of the PRF.
27. 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.
28. 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.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 3, 2024 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.*

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 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 281,300
<u>Improvements</u>	<u>\$ 786,900</u>
Total	\$1,068,200

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 2023.
7. This Decision and Order is effective on November 22, 2024.

Signed and Sealed: November 22, 2024



Jackie S. Russell, Commissioner