

**STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT**

**KENNETH DEHOFF and KATHLEEN
DEHOFF,
Appellants/Respondents,**

v.

Case No. D-1329-CV-2023-01382

**LINDA P. GALLEGOS, in her official
capacity as Sandoval County Assessor,
Appellee/Petitioner.**

**MEMORANDUM OPINION AND ORDER AFFIRMING THE DECISION OF THE
SANDOVAL COUNTY VALUATION PROTESTS BOARD**

This matter is before the Court on Kenneth and Kathleen DeHoff's appeal, filed pursuant to Rule 1-074 NMRA, and Sandoval County Assessor Linda Gallegos's petition for a writ of certiorari, filed pursuant to Rule 1-075 NMRA, challenging a decision of the Sandoval County Valuation Protests Board. The Court has reviewed each party's statement of the issues, the responses, and the DeHoffs' reply. The Court has also reviewed the record from the Sandoval County Valuation Protests Board, including listening to the recording of the hearing. Having been sufficiently advised, the Court affirms the board's decision.

Factual and Procedural Background

The DeHoffs own four properties in Corrales. One of the properties is residential and has a house and a barn, while the remaining three lots are undeveloped. In 2023, the assessor assessed the residential property at \$1,163,993, one of the undeveloped lots at \$195,044, and two of the undeveloped lots at \$204,000. The DeHoffs protested the valuation of all four properties.

At the protest hearing before the Sandoval County Valuation Protests Board, Mr. DeHoff testified that the assessor treats a six-mile north-south corridor of approximately 2,500 properties

east of Loma Larga Road all the same at \$4.68 per square foot (which this Court calculates as approximately \$203,861 per acre). He testified that this approach values less desirable properties such as his own well above market value and confers a benefit on wealthier landowners who buy more expensive, more desirable properties, by valuing their properties well below the amounts they paid and requiring them to pay less in property taxes than people with less valuable lots. Mr. DeHoff testified that, as a consequence, for properties on the far ends of the spectrum—the least valuable and the most valuable—the valuation bears no reasonable relationship to the market value. As an example, DeHoff pointed to a lot where the owner paid \$310,000 for the property, which was then valued by the assessor at \$214,000—approximately one-third less than the purchase price. DeHoff testified that the market value of properties varies widely in Corrales because the properties are diverse. He testified that properties at the southern end of the village sell for higher prices because they are closer to Albuquerque, whereas properties such as his in the northern end sell for less because they require a slow six-mile drive through village to get to Albuquerque. He testified that his properties are in a FEMA flood zone, whereas properties in the south of Corrales are not, and that he had to build his property up two feet to get out of the flood zone. He testified that the south of Corrales has a ditch system with nice trails next to clean water and the bosque, whereas in the north, there is a drain that looks like a swamp and isn't maintained. He testified that his undeveloped properties have no utilities, and no roads or access for two of the lots, whereas the rest of Corrales has utilities, fire hydrants, and, in some locations, sewer access. He testified that he does not have his own gate for irrigation. He testified that in the south of Corrales there are many multimillion-dollar mansions, whereas the lots next to his are six very small nonconforming lots of .2 acres, some of which have mobile homes on them.

With respect to the value of his residential property, DeHoff testified that the comparable properties the assessor selected were not actually comparable because they had pools, gates, and lawns, because they had utility buildings that the assessor did not properly account for, and because the square footage of the living spaces was wrong. DeHoff testified that he built his house himself in 2021, and the building permit stated that the cost of the house was \$525,000. He testified that the residential land should be valued at \$160,000, the house should be valued at \$554,392, and the barn and garage should together be valued at \$78,500, for a total value of the residential property at \$792,882.

At the hearing, the assessor reduced her valuation of the DeHoffs' residential property from the original assessed value of \$1,163,993 to \$986,368. The assessor presented testimony that this reduced assessment was based on five comparable properties, all of which had homes that, like the DeHoffs', were 3,000 square feet or greater, on lots that were one acre or greater, with the value of each residential property adjusted down as if the lots were one acre like the DeHoffs'. Like the DeHoffs' property, all five comparable properties were on the east side of Loma Larga Road and all had irrigation. The map introduced by the assessor showed that the five comparable properties were all at the south end of Corrales, while the DeHoffs' property is in the north. The median value of these five comparable properties was \$256 per square foot of useable residential space. The assessor multiplied that amount times 3,853, which is the useable square footage of the DeHoffs' house, to get the \$986,368 valuation. This valuation amount was for the residential property as a whole—including the value of the land, the house, and the barn.

The board issued its decision on September 6, 2023. In its decision, the board stated that the DeHoffs' evidence persuaded the board that the unimproved land values in the south end of Corrales were not comparable to the value of unimproved land in the north end. Accordingly, the

board reduced the valuation of the unimproved lot that the assessor had valued at \$195,044 to \$153,000, and reduced the valuation of the two unimproved lots that the assessor had valued at \$204,000 to \$160,000. The board stated that as to the residential property, the DeHoffs' evidence had not overcome the presumption of correctness of the assessor's valuation, and thus the board accepted the assessor's reduced valuation of the residential property at \$986,368.

The DeHoffs appealed to this Court, and the assessor filed a petition for a writ of certiorari.

Discussion

The DeHoffs assert that the board erred in accepting the assessor's reduced valuation of their residential property. The assessor asserts that the board erred in valuing the three unimproved lots. This Court concludes that neither party has demonstrated error.

Standard of Review

This Court will only reverse the board's decision if: 1) the board acted fraudulently, arbitrarily, or capriciously, 2) its decision was not supported by substantial evidence in the whole record, 3) its action was outside the scope of its authority, or 4) its action was otherwise not in accordance with law. Rule 1-074(R); 1-075(R). This Court reviews the evidence in the light most favorable to the board's decision, and will uphold that decision so long as it is supported by evidence that is "sufficient for a reasonable mind to accept as adequate to support the conclusion reached by the agency." *Process Equip. & Serv. Co., Inc. v. New Mexico Tax'n Revenue Dep't*, 2023-NMCA-060, ¶ 28, *cert. denied* 2023-NMCERT-010. This is true even if the evidence could have supported different findings than those made by the board. *Alexander v. Anderson*, 1999-NMCA-021, ¶ 23, 126 N.M. 632.

The Board Committed No Error in Accepting the Assessor's Reduced Valuation of the Residential Property

The assessor presented a new, reduced valuation of the DeHoffs' residential property at the hearing: \$986,368, rather than her original valuation of \$1,163,993. The assessor's valuation is entitled to a presumption of correctness. *See* NMSA 1978, § 7-38-6 (1981) ("Values of property for property taxation purposes determined by . . . the county assessor are presumed to be correct."). In order to overcome the presumption of correctness, the protestant must come forward with evidence that the valuation is incorrect. NMAC 3.6.7.13(A) ("To overcome the presumption of correctness . . . , the taxpayer has the burden of coming forward with evidence showing that values for property taxation purposes determined by . . . the county assessor . . . are incorrect."). If the protestant provides such evidence, then "the burden of showing a correct valuation shifts to the . . . county assessor." NMAC 3.6.7.13(C).

In an effort to overcome the presumption of correctness, the DeHoffs introduced testimony from Mr. DeHoff that the comparable properties that the assessor relied on were not in fact comparable because they had pools, gates, and lawns, and because one of the properties had a nicer barn than the DeHoffs'. Mr. DeHoff argued that the pools should be valued at \$20,000 and that all utility buildings should be treated the same per square foot. But the assessor presented evidence that a pool often reduces the value of a property since it must be cleaned and maintained, and there was no specific evidence from the DeHoffs about the degree to which gates and lawns affect the value of residential properties in Corrales. Furthermore, although all five of the properties that the assessor used as comparables were in the south of Corrales, and the board accepted the DeHoffs' evidence that unimproved properties in the south of Corrales were not comparable to unimproved properties in the north, the board was not required to reach the same conclusion with respect to residential properties. The board concluded that the properties were comparable. Under New Mexico law, any evidence on whether a property sale is comparable or not is to be evaluated by

the board, in light of the knowledge and experience of its members. *See 2727 San Pedro LLC v. Bernalillo Cnty. Assessor*, 2017-NMCA-008, ¶ 19 (“In determining the weight to give admitted evidence of valuation, the protests board members may use their knowledge and experience.” (text only)); NMAC 3.6.7.36(H)(1) (“The county valuation protests board shall consider all evidence admitted. Board members may use their knowledge and experience to evaluate evidence admitted.”). Here, the board members used their knowledge and experience to determine that the five comparable sales were appropriate for determining the market value of the DeHoffs’ residential property. In reviewing that conclusion on appeal, this Court does not reweigh the evidence, even if the evidence would have permitted the board to have made different findings or to reach a different conclusion. *See Alexander*, 1999-NMCA-021, ¶ 23.

The Board Committed No Error in Its Valuation of the Three Unimproved Lots

The DeHoffs and the assessor introduced evidence that the assessor used the mass appraisal technique in valuing 2,500 lots in a six-mile stretch of Corrales on the east side of Loma Larga Road. The mass appraisal technique is a method by which “large areas of land are given a valuation, based on market data, as to what similar land will sell for[,] without engaging in individual parcel-by-parcel appraisals.” *Matter of Protest of Cobb*, 1991-NMCA-122, ¶ 5, 113 N.M. 251. It is a method of determining the market value of the property, the reliability of which depends, as with any other market value method of valuation, on the “degree of comparability” of the properties that serve as comparable sales, among other factors. NMAC 3.6.5.22(G)(1). The New Mexico Court of Appeals has recognized the mass appraisal technique is appropriate for determining the market value of undeveloped land under circumstances where:

1. The universe of similar properties is defined by determining that a particular group of properties within an area or neighborhood *are similar as to size, shape, location, topography, accessibility, and availability of utilities.*

2. Information concerning sales of properties within the area or neighborhood is gathered and the data is analyzed. A fair market value for the entire unit is determined based on the mode, which is the most frequently occurring purchase price for properties in the universe. The fair market value is assigned to all properties in the universe.
3. Information regarding sales in the universe is collected on an ongoing basis. That data is used to verify and update values in the universe.
4. If a property owner files a protest, the property is physically examined by the appraiser and the data regarding comparable sales in the universe is examined in order to determine whether the valuation is correct.

Matter of Protest of Cobb, 1991-NMCA-122, ¶ 6 (emphasis added).

Here, based on the evidence of the variability of the properties in Corrales and the differences between the properties in the north of Corrales and the properties in the south, the board in effect concluded that the assessor failed to comply with the first requirement, in that she did not appropriately define the universe of similar properties. Instead of looking only at those properties in a similar location in the north of Corrales with similar amenities, the assessor included sales of properties in the south of Corrales, which were more desirable and more valuable for a number of reasons. Accordingly, the requirements of the mass appraisal technique as approved under New Mexico law were not met. The board found that the evidence at the hearing demonstrated that the DeHoffs' property should not be valued the same as those in the southern part of the village. That decision was supported by substantial evidence.

With respect to the actual dollar value that the board reached for the three undeveloped lots, the assessor has failed to meet the requirements for challenging the sufficiency of the evidence, and, in any event, the Court finds that the evidence was sufficient. The assessor does not point out all of the evidence supporting the board's findings; does not state the reasonable inferences that could be drawn from that evidence; and does not explain why all the pertinent evidence, on balance, fails to support the board's findings. See *Martinez v. Sw. Landfills, Inc.*,

1993-NMCA-020, ¶¶ 5, 8-12, 115 N.M. 181, 848 P.2d 1108. Instead, the assessor explains why the evidence supports her desired findings. This, however, is not relevant to the inquiry on appeal. See *Alexander*, 1999-NMCA-021, ¶ 23. The DeHoffs provided evidence that the current valuation of their unimproved lots was \$3.67 a square foot and that there were no recent comparable sales. The DeHoffs also provided evidence that in 2022 (the year used by the assessor for her 2023 valuation), his neighbors' properties were valued at \$2.61 a square foot, and also provided two alternative analyses that would support a valuation of \$3.51 per square foot or \$2.81 per square foot. Rather than asking the board to reduce the assessment from its current value of \$3.67 per square foot to any of these lower values, the DeHoffs asked the board to leave the property at its current valuation. The board did so. The board's decision was supported by substantial evidence.

Conclusion

For these reasons, the Court AFFIRMS the board's decision.

IT IS SO ORDERED.



The Honorable Allison P. Martinez
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing was served on all parties appearing *pro se* and counsel of record by first-class mail, in person, or by Odyssey E-file & Serve on the date of filing. /s/ Laurene C. Harris
TCAA for Judge Martinez