

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

GERALD M. WITHERBY
APPELLANT,

CASE NO: 19R 0346

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 2202445264.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$232,800 for tax year 2019.
3. Gerald M. Witherby (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 \$232,800 for tax year 2019.
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 August 31, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Gerald M. Witherby was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office were 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 improved with a 1,661 square foot ranch style residence constructed in 1984. The Subject Property has a quality of construction rating of good and a condition rating of average. The Subject Property has 200 square feet of basement finish and a 250 square foot solar room.
17. The County Board presented the 2019 Property Record Files (PRF) for the 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.
18. The Taxpayer alleged that the value of the Subject Property was too high compared to other comparable properties.
19. The Taxpayer presented a property tax comparisons spreadsheet, and a recent comparable sales spreadsheet prepared by a realtor for the Subject Property's neighborhood.
20. The property tax comparisons spreadsheet does not show the age, style of construction, quality, or condition of any of the properties listed and based on the PRF for the Subject Property combines the above ground living area which would add more

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).

value per square foot with below ground finished area which contributes less value.

21. The sales listed in the recent comparable sales spreadsheet prepared by a realtor for the Subject Property's neighborhood shows the same information as the information regarding the qualified sales that occurred in the economic area of the Subject Property presented by the County Board.
22. The Taxpayer did not present the PRFs for the properties listed on the table of comparable property evaluations or the table of subdivision sales results. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented 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 contained in the Taxpayers charts to the Subject Property.⁹
23. The Commission is unable to determine the comparability of the properties presented by the Taxpayer to the Subject Property.
24. The County Appraisers pointed out that the per square foot value of the Subject Property is below the average assessed value and sales price per square foot for recently sold ranch style properties in the same neighborhood.
25. The Taxpayer alleged that the add on square footage listed as a solar room is not living area.
26. The County Appraisers stated that based on the information presented by the Taxpayer regarding the solar room and the information that they had regarding the replacement cost of the

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on December 10, 2020, 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.*

- area described should be reduced and the value contributed by this add-on should be reduced by \$8,877 for tax year 2019.¹⁰
27. The Commission finds that the value of the Subject Property for tax year 2019 is \$223,923.
 28. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
 29. The Taxpayer has 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 vacated.

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 2019 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 36,700
<u>Improvements</u>	<u>\$187,223</u>
Total	\$223,923
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.

¹⁰ Reducing the Replacement Cost New from \$34,998 to \$17,000 using the Depreciation adjustment of 31.99%, the neighborhood adjustment of 1.0735 and the quality adjustment of .84 would change the contributory value of the Solar Room add-on from \$19,302 to \$10,426, resulting in a reduction in assessed value of \$8,875.

6. This Decision and Order shall only be applicable to tax year 2019.

7. This Decision and Order is effective on February 10, 2023.

Signed and Sealed: February 10, 2023



Steven A. Keetle, Commissioner