

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

LEROY N. EDWARDS
APPELLANT,

CASE NOS: 20R 0357 & 21R
0671

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 consists of an improved residential parcel in Douglas County, parcel number 1842390304.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$309,300 for tax year 2020 and \$361,300 for tax year 2021.
3. LeRoy N. Edwards (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$280,000 for tax year 2020 and \$300,000 for tax year 2021.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on January 13, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. LeRoy N. and Rose M. Edwards were present at the hearing for the Taxpayer.
8. Scott Barnes with the County Assessor's Office (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 Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior years' assessment is unreasonable or arbitrary.
17. The County Board presented the 2020 and 2021 Property Record File (PRF) for the Subject Property. The PRFs contain 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 for each of the tax years at issue.
18. The valuation history of the Subject Property shows that the market area in which the Subject Property is located was reappraised for the 2020 and 2021 tax years.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰

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 See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
21. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with comparable properties located on the same cul-de-sac as the Subject Property.
22. The Nebraska Court of Appeals held in *Scribante* that “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹²
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
24. The Taxpayer presented information from the Assessors web site for three properties located on the same cul-de-sac as the Subject Property for both tax year.
25. The Taxpayer presented portions of the PRF for the three properties located on the same cul-de-sac as the Subject Property for the 2020 tax year.
26. The County Appraisers stated that the differenced in amenities between the Subject Property and the other three properties presented would make the other four properties not comparable to the Subject Property.
27. The information presented to the Commission demonstrates that the higher assessed value for the Subject Property, when compared to the other properties offered by the Taxpayer, is explained by the differences in their characteristics, including outbuildings.
28. The Taxpayer discussed the characteristics of the outbuilding constructed in 1996 that is listed as a stable on the PRF.

¹¹ Neb. Rev. Stat §77-1301(Reissue 2018)

¹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

29. The Taxpayer alleged that the 1996 outbuilding should be considered a barn or storage building rather than a stable.
30. The County Appraiser, when asked to review the information presented by the Taxpayer stated that changing the 1996 building from a stable to a barn would reduce the County Assessors assessed value of the Subject Property by approximately \$27,200 for each tax year.
31. Reducing the value of the Assessor's determination of value by \$27,200 each tax year would result in values of \$282,100 for tax year 2020 and \$334,100 for tax year 2021. These values are higher than the valuation determinations made by the County Board for each tax year.
32. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction of assessed value under the court's determination in *Scribante*.
33. 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.
34. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax years 2020 is:

Land	\$ 85,000
<u>Improvements</u>	<u>\$195,000</u>
Total	\$280,000

3. The taxable value of the Subject Property for tax years 2021 is:

Land	\$ 85,000
<u>Improvements</u>	<u>\$215,000</u>
Total	\$300,000

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2020 and 2021.
8. This Decision and Order is effective on May 17, 2023.

Signed and Sealed: May 17, 2023



Steven A. Keetle, Commissioner