

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

DAVID L. JABENS
APPELLANT,

CASE NO: 20R 0386

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 1420980085.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$260,700 for tax year 2020.
3. David L. Jabens (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 \$260,700 for tax year 2020.
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 March 17, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. David Jabens and Sharon L. Jabens were present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (County Appraisers) 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 a 7.5 acre rural residential parcel improved with a 1,575 square foot ranch style residence built in 1971.
17. The Taxpayer alleged that the assessed value of the Subject Property should be lowered due to its condition as of the assessment date
18. The Taxpayers discussed the condition of the Subject Property and presented photographs of the chimney, bay windows, garage ceiling, and wooded acres of the Subject Property.
19. The County Board presented the Property Record File (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.
20. The PRF for the Subject Property indicates that Subject Property has a condition rating of average.
21. The Commission finds that the condition of the Subject Property as shown in the photographs and described by the Taxpayer was consistent with a condition rating of average.

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).

22. The photographs and statements of the Taxpayer do not show that the condition rating of average for the Subject Property is unreasonable, arbitrary, or incorrect.
23. The Taxpayer alleges that the measurements of the bay windows shown on the PRF are incorrect and that the square footage of the Subject Property is therefore incorrect.
24. The County Appraisers agreed that the above ground square footage of the Subject Property should be 1,566 square feet.
25. The Commission finds that the above ground square footage of the Subject Property should be changed to 1,566 square feet for assessment year 2020 and the value of the improvements on the Subject Property correspondingly be reduced by \$700 to \$164,400.⁹
26. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed value of nearby properties
27. The Taxpayer provided maps of the area around the Subject Property and information from the County Assessor’s web site regarding 16 parcels. The Taxpayer also provided photographs and real estate listing information regarding some of these 16 parcels. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
29. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made

⁹ 1,566 SF x \$106.67 \$/SF	Base Value	\$167,045
	HVAC	+ \$ 2,630
	Add On value	+ \$ 92,363
	14.82% dep	- \$ 97,038
	NBHD Adj	x 1.0151
	Quality Adj	<u>x 1.2000</u>
Improvement Value		= \$164,400

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

more like the subject, its price is brought closer to the subject's unknown value.”¹¹

30. The information presented by the Taxpayer demonstrates that the properties presented are significantly different than the Subject Property in both land components and improvements. Without the PRF for the comparable properties or the reference properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.¹²
31. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
32. The Taxpayer alleges that the sales of properties near the Subject Property show that the assessed value of the Subject Property is too high compared to other properties.
33. The majority of sales presented by the Taxpayer are three or more years from the assessment date and the information presented shows that they would not be relevant to the 2020 assessment.
34. The sale presented by the Taxpayer that is within two years prior to the assessment date is included in the County Board list of qualified sales that occurred in the economic area of the Subject Property. This list of sales supports the valuation determination of the County Board.
35. Several sales presented by the Taxpayer occurred after the assessment date and were not considered by the County Board or County Assessor for the 2020 assessment. These sales, if comparable, would indicate that the assessed values of properties in the area, including the Subject Property, may be

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 28, 2022, 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.*

too low for subsequent tax years but provide the Commission with no basis for adjusting the value of the Subject Property for the 2020 assessment.

36. The Taxpayer alleges that a portion of the land component of the Subject Property should be assessed as waste acres.
37. There is no information before the Commission to demonstrate the assessed value of waste acres in the area of the Subject Property or any other information regarding the value of the acres on the Subject Property alleged to be waste acres.
38. The Commission finds that the assessed value of the Subject Property for the 2020 assessment is \$260,000, with the value being allocated at \$95,600 for the land component and \$260,000 for the improvements.
39. 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.
40. 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 2020 is reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 95,600
<u>Improvements</u>	<u>\$164,400</u>
Total	\$260,000

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 2020.
7. This Decision and Order is effective on February 28, 2023.

Signed and Sealed: February 28, 2023



Steven A. Keetle, Commissioner