

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

THERESA M. MANAHAN,
APPELLANT,

CASE NO: 20R 0446

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 1233510295.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$663,400 for tax year 2020.
3. Theresa M. Manahan (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 \$631,200 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 November 18, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Theresa Manahan was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (the 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 residential parcel improved with a 3,412 square foot one and one-half story residence constructed in 2018. The Subject Property has quality and condition ratings of good.
17. The Taxpayer alleged that the value of the Subject Property should be lower because it backs up to Q Street.
18. Information from the County Assessor's web site presented by the Taxpayer indicates that the County Assessor has applied a negative influence factor due to traffic to the assessment of the Subject Property.
19. A map of the Subject Property's market area shows that all of the parcels along the southern edge of the subdivision back up on West Q Road, a rural two-lane road.
20. The Taxpayer did not present any information to allow the Commission to quantify what, if any, impact that the location of West Q Road along the southern edge of the Subject Property not already accounted for by the assignment of the negative influence factor.
21. The Taxpayer alleged that the assessed value of the Subject Property for tax year 2020 should be reduced because the value was reduced by the County Board in 2021.

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 assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ For these reasons, the Commission concludes that subsequent assessments are not relevant to the prior assessment.¹¹
23. The Taxpayer presented information from the County Assessor's web site regarding the Subject Property and three properties that sold prior to the assessment date.
24. 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.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
26. "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 more like the subject, its price is brought closer to the subject's unknown value."¹³
27. The Taxpayer did not present the complete PRFs for the three properties presented. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their

⁹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁰ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹¹ See *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties presented by the Taxpayer to the Subject Property.¹⁴

28. A review of the information presented by the Taxpayer from the County Assessor's web site shows that the Subject Property and the other three properties are all improved with one and one-half story houses with quality and condition ratings of good.
29. Compared to the Subject Property two of the properties presented are improved with smaller houses that have fewer amenities and smaller lots and one is improved with a larger house that has more amenities and a larger lot.
30. The Subject Property has a higher value per square foot than the smaller houses with fewer amenities and smaller lots and a lower per square foot value than the larger property with more amenities and a larger lot.
31. The information that the Taxpayer presented from the County Assessor's web site supports the position that the differences in the valuations are due to differences in the characteristics of the properties such as basement finish, garage size, fireplaces, etc.
32. The assessed values of the properties presented by the Taxpayer do not show that the valuation determination of the County Board is unreasonable or arbitrary.
33. The County Appraisers stated that the three properties presented by the Taxpayer sales would not have been used to determine the assessed value of the Subject Property for tax year 2020 as one was older than the two-year sales window used by the County Assessor and the other two were in a different market area than the Subject Property.

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 7, 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.*

34. 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.
35. 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.

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 affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 46,200
<u>Improvements</u>	<u>\$585,000</u>
Total	\$631,200

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 2020.

7. This Decision and Order is effective on October 25, 2023.

Signed and Sealed: October 25, 2023



Steven A. Keetle, Commissioner