

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

LARRY E. FRYE,
APPELLANT,

CASE NO: 20R 0545

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 2243107558.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$256,200 for tax year 2020.
3. Larry E. Frye (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 \$240,000 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 September 16, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Larry E. Frye 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 1,580 square foot ranch style property constructed in 1993. The Subject Property has a quality and condition rating of good.
17. The Taxpayer alleged that the value of the land component of the Subject Property is not equalized with other comparable properties.
18. The Taxpayer presented the report of the County Board for his protest of the valuation, which indicates that the County Board adopted the referee's recommendation that a change of value was supported.
19. The Taxpayer presented the information from the County Assessor's web site regarding two nearby properties to support the request for a lower valuation of the land component of the Subject Property.
20. The County Board presented the 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.

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).

21. The PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2020.
22. The County Appraisers stated that a reappraisal was necessary as recent sales indicated that assessed values were too low. The reappraisal indicated that overall values in the area were increasing and the value of the improvements in the area were increasing but the portion of the value attributable to the land components was decreasing.
23. The County Appraisers stated that the land value as allocated by the County Board was not equalized with other properties but that a further reduction in the overall value of the Subject Property would result in an overall value that would be below actual value and be dis-equalized with other properties.
24. The County Appraiser stated that if the amount of value allocated to the land component of the Subject Property were reduced the value allocated to the improvements would have to be increased by the same amount to maintain equalization with the total assessed value.
25. The County Board presented a list of recent valid sales in the Subject Property's market area to support the statements of the County Appraisers.
26. The Taxpayer has demonstrated that the allocation of value between land and improvements by the County Board was unreasonable and arbitrary.
27. The Taxpayer stated that the Subject Property does not have a built-in vacuum cleaning system as indicated on the PRF.
28. The Commission finds that the value of the Subject Property should be reduced by \$1,700⁹ the amount of value added for the built-in vacuum cleaning system.
29. The Commission therefore finds and determines that the value of the Subject Property for tax year 2020 is \$238,300, with

⁹ \$3,085 (Vacuum clean sys) - \$654 (21.21% depreciation) x 1.007 NBHD Adjustment x 0.70 Quality Adjustment = \$1,700 (Rounded)

\$21,400 allocated to the land component and \$216,900 allocated to the improvements.

30. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the value of other comparable properties.
31. The Taxpayer presented information from the County Assessor's web site regarding properties near the Subject Property that did not receive valuation increases for tax year 2020.
32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
33. "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."¹¹
34. The Taxpayer presented information from the County Assessor's web site regarding properties near the Subject Property that did not receive valuation increases for tax year 2020.
35. The Taxpayer did not present the PRFs for these other 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 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 chart to the Subject Property.¹²

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

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 July 29, 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.*

36. The information that was presented shows that the properties presented by the Taxpayer are townhouses located in a condominium regime and in a different market area than the Subject Property.
37. The County Appraisers stated that the value of properties in a condominium regime were impacted by different market factors than the Subject Property and would not be comparable for assessment purposes.
38. The Commission cannot find that the properties presented by the Taxpayer are comparable to the Subject Property.
39. The Taxpayer has not shown that the value of the Subject Property is not equalized with other properties.
40. 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.
41. 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 21,400
<u>Improvements</u>	<u>\$216,900</u>
Total	\$238,300

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 September 11, 2023.

Signed and Sealed: September 11, 2023



Steven A. Keetle, Commissioner