

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

TOM ORANGE,
APPELLANT,

CASE NO: 20R 0590

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2012146042.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$237,200 for tax year 2020.
3. Tom Orange (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 \$237,200 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. Thomas Orange and Corey Simpson were 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 1,374 square foot one story duplex townhouse constructed in 2006. The Subject Property has a quality rating of average and a condition rating of good.
17. 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.
18. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2020.
19. The Taxpayer alleged the assessed value of the Subject Property was not equalized with other comparable properties.
20. The Taxpayer presented information from the County Assessor's web site for two other nearby properties.
21. The County Appraisers stated that the two properties presented by the Taxpayer were located in a different market area, on different sides of State Street, impacted by different market condition and a different style of construction than the Subject Property.

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. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
23. “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.”¹⁰
24. The Taxpayer did not present the PRFs for the two other properties alleged to be comparable. 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.¹¹
25. The two properties presented by the Taxpayer do not have finished basements and are “quad-plexes”, or four residences under a single roof with two shared walls while the Subject Property has basement finish and is a duplex townhome with a single shared wall
26. The properties presented by the Taxpayer as comparable are a different style of construction than the Subject Property, have smaller lots, and do not have basement finish or back decks as does the Subject Property.
27. The County Appraisers discussed the sales data presented from the Subject Property’s market area as well as the market area in which the two properties presented by the Taxpayer were

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ 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.*

located. The County Appraisers stated that Sales prices of otherwise similar properties were higher in the Subject Property's market area than in the market area in which the two properties presented by the Taxpayer were located which indicated different market factors influenced values in the two different market areas.

28. The Commission finds that the two properties presented by the Taxpayer are not comparable to the Subject Property.
29. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with other comparable properties.
30. The Taxpayer alleged that the assessed value of the Subject Property was determined by a single sale of a one-story town home in the market area.
31. The sale of a one-story town home in the same market area as the Subject Property, was included in the list of valid sales presented by the County Board, along with all other valid sales in the market area.
32. The County Appraiser's stated that the assessed values of the Subject Property and the sold one-story townhome were different based on different features such as condition, square footage, basement finish, garage size, and lot size and that sales prices were used to calibrate the assessment model.
33. The Taxpayer has not shown that the assessed value of the Subject Property was determined based on a single sale.
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	\$ 31,000
<u>Improvements</u>	<u>\$206,200</u>
Total	\$237,200

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