

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

THOMPSON HOLDINGS LLC,  
APPELLANT,

CASE NO: 21C 1056

V.

DECISION AND ORDER  
REVERSING 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 0640920000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$732,500 for tax year 2021.
3. Thompson Holdings LLC (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 \$732,500 for tax year 2021.
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 January 12, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
7. Sean Mullen, Attorney, and James Canedy 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a one and one-half story building constructed in 2013. The Subject Property has a quality and condition rating of good.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
18. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
20. The Taxpayer alleges that the Subject Property is not a single-family residence, but a garage for the adjacent parcel.
21. 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

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> Neb. Rev. Stat §77-1301(Reissue 2018).

- the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
22. The County Appraiser stated that the market area in which the Subject Property is located was reappraised for tax year 2021 and that the last full reappraisal of the market area was in 2011.
  23. The Taxpayer presented photographs of the interior of the Subject Property and the adjacent property.
  24. The Taxpayer presented a copy of the building permit for the improvements on the Subject Property.
  25. The Taxpayer stated that the Subject Property is used as a garage for the adjacent property, to which it is attached via a covered walkway, and as a workshop. The Taxpayer acknowledged that portions of the Subject Property have been used to house guests.
  26. The Subject Property and the adjacent property are separate parcels under separate ownership.
  27. The Taxpayer stated that the Subject Property was built like an industrial building but finished to resemble a residential parcel on the outside to fit into the neighborhood.
  28. The Taxpayer alleged that the Subject Property could not be a residential property because it doesn't have a kitchen.
  29. The Taxpayer requested that the Subject Property be valued at the value of the land component of \$194,200 and the cost of construction listed on the 2011 building permit of \$117,168 for a total value of \$311,368 for tax year 2021.
  30. The County Appraisers acknowledged that the Subject Property is a unique property, similar to a "barndominium" not often found in the City of Omaha.
  31. The County Appraisers stated that the Subject Property was inspected and that while the main floor of the Subject Property was one large room the interior finishes were of the same quality as a residential property.

32. The County Appraisers further stated that based on that inspection, they believed that the condition rating of the Subject Property should be reduced to average, the square footage changed as noted in the account notes section of the PRF, and a functional depreciation factor of 15% was applied to the value for the lack of a kitchen.
33. The County Appraisers stated that after inspecting the Subject Property their opinion of value for tax year 2021 would be \$634,900.
34. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$634,900, with \$194,200 allocated to the land component and \$440,700 allocated to the improvements.
35. 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.
36. 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 2021 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$194,200
<u>Improvements</u>	<u>\$440,700</u>
Total	\$634,900

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 2021.
7. This Decision and Order is effective on December 28, 2023.

Signed and Sealed: December 28, 2023



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Steven A. Keetle, Commissioner