

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

JAMES J. O'NEILL
APPELLANT,

CASE NO: 21R 0502

V.

HALL COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Hall County, parcel number 400099004.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$158,873 for tax year 2021.
3. James J. O'Neill (the Taxpayer) protested this value to the Hall County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$158,873 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 October 20, 2022, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor, before Commissioner James D. Kuhn.
7. James J. O'Neill was present at the hearing for the Taxpayer.
8. Sarah Carstensen (County Attorney) and Kristi Wold (the Assessor) was 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 Taxpayer provided numerous property record files (PRF) as evidence the Subject Property is being over assessed. The Commission focused on the comparable properties that are in the same neighborhood as the Subject Property. Twelve of the Taxpayers comparable properties are from the same neighborhood as the Subject Property and are of similar build style, Split Foyer Frame; and most have the same Condition but varying Grade ratings. After analyzing the comparable properties, the Commission found the Subject Property's improvement value to be \$149.97 per square foot. The median price per square foot of the comparable properties is \$149.90 per square foot. The comparable property most similar in age, size, square footage, condition, and grade to the Subject Property is located at 2410 Overland Trail CR. 2410 Overland Trail Cr has an improvement value of \$151.59 per square foot, which is higher than the Subject Property per square foot value of \$149.97.
17. The Taxpayer stated houses are selling for more than they are assessed at and feels his value should be lowered to account for that. The Assessor is required by law to value every residential property at 100% of actual value. If properties are selling for more than assessed value, the Assessor will have no option but

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).

to make an adjustment to values. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁹

18. The Assessor stated sales of similar style homes shows the current assessment of the Subject Property is correct. The Assessor provided four sales of similar style homes with indicated per square foot values of between \$172.97 to \$253.90. The Assessor provided seven comparable properties as equalization comparables. The comparable properties are of same build style and similar square footage. The comparables show the Subject Property is being valued fairly and equally among similar properties.
19. The Taxpayer's comparable properties and the Assessor's comparable properties both show the Subject Property is being valued fairly and equally.
20. 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.
21. 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

⁹ Neb. Rev. Stat. § 77-201(1)-(3) (Reissue 2018).

Land	\$ 9,504
<u>Improvements</u>	<u>\$149,369</u>
Total	\$158,873

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 June 8, 2023.

Signed and Sealed: June 8, 2023



James D. Kuhn, Commissioner