

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

JOHN I. AYERS,
APPELLANT,

CASE NO: 21R 0529

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 2117770000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$479,100 for tax year 2021.
3. John I. Ayers (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 \$435,000 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 February 21, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John Ayers was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office 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 2,448 square foot ranch style residence. The Subject Property has a quality rating of good and a condition rating of fair.
17. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessment year was unreasonable or arbitrary.
18. 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 Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹
19. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because the assessed value was reduced by the County Board in the subsequent tax year.
20. The determination of the County Board adjusting the value of the Subject Property for the subsequent tax year was not presented to the Commission.

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).

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

21. A decree fixing the value of property under a prior assessment is immaterial and not admissible to prove value under a subsequent assessment.¹² This same principle applies to a decree fixing the value of a property for a subsequent assessment.
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹³
23. The Commission can only make its determination based on the information presented to it.
24. The County Board presented the 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. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.
26. The County Appraisers stated that sales in the area of the Subject Property were indicating that assessed values were lower than sales values necessitating the 2021 reappraisal of the entire market area that included the Subject Property.
27. The Taxpayer alleged that the sales of comparable properties indicated that the Subject Property was overvalued and that the Subject Property was not being equalized with other comparable properties.
28. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁴

¹² *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988) (citing *DeVore v. Board of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944)); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹³ Neb. Rev. Stat §77-1301(Reissue 2018)

¹⁴ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

29. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵
30. The Taxpayer presented a table of information about eight recent sales of properties near the Subject Property and the assessed values of five nearby properties.
31. The Taxpayer presented information from the County Assessor's web site for the properties on the table that showed the 2023 preliminary values.
32. The Taxpayer did not present the PRFs for the properties listed on the table of information regarding the sold properties or the properties presented as equalization comparables. 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.¹⁶
33. The information that the Taxpayer did present show differences between the Subject Property and the properties presented, both as sales comparables or equalization comparables.
34. The Subject Property for example has the lowest condition rating of the properties presented but it is also thirty to fifteen years newer than all but one of the properties presented as comparables and is on the second largest lot.
35. The Subject Property is one of only three properties of brick or masonry construction of the thirteen properties presented.

¹⁵ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 19, 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. There are also differences in quality of construction, style of construction, amount of and quality of basement finish, porches, swimming pools, decks, and lot size.
37. The recent sales of properties presented by the Taxpayer do not demonstrate that the assessed value of the Subject Property was higher than actual value.
38. The properties presented by the Taxpayer do not demonstrate that the assessed value of the Subject Property is not equalized with other comparable properties.
39. 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.
40. 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:

Land	\$150,000
<u>Improvements</u>	<u>\$285,000</u>
Total	\$435,000

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 September 18, 2023.

Signed and Sealed: September 18, 2023



Steven A. Keetle, Commissioner