

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

DAVID L. JABENS,
APPELLANT,

CASE NO: 21R 0596

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 1420980085.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$260,700 for tax year 2021.
3. David L. Jabens (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 \$260,700 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 March 6, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. David and Sharon Jabens 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 7.50-acre rural residential parcel improved with a ranch style residence built in 1971. The Subject Property has condition and quality ratings of average.
17. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed value of nearby properties.
18. 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 rural residential properties in the area, including the Subject Property.
19. The Taxpayer provided a map showing the location of four properties in the area of the Subject Property and information from the County Assessor's web site regarding these four parcels and one additional parcel. The Taxpayer also provided aerial photographs of one of the parcels. However, the Taxpayer did not provide the Property Record Files (PRF) for these properties.

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).

20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
21. “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
22. The information presented by the Taxpayer demonstrates that the properties presented are significantly different than the Subject Property in both land components and improvements. Without the PRF for the comparable properties or the reference properties, the Commission is unable to determine the adjustments to apply to make the other properties comparable to the Subject Property.¹¹
23. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
24. The Taxpayer alleges that the land component of the Subject Property is assessed to high, and a portion of the land component should be assessed as waste acres.
25. There is no information before the Commission to demonstrate the assessed value of waste acres in the area of the Subject Property or any other information regarding the value of the acres on the Subject Property alleged to be waste acres.
26. The Taxpayer discussed the that the measurements of the bay windows shown on the PRF are incorrect and that the square footage of the Subject Property is therefore incorrect.

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 November 17, 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.*

27. The County Appraisers reviewed the information regarding the above ground square footage and the measurement of the bay window and agreed that the above ground living area of the Subject Property should be 1,566 square feet.
28. The Commission finds that the above ground square footage of the Subject Property should be changed to 1,566 square feet for assessment year 2021 and the value of the improvements on the Subject Property correspondingly be reduced by \$600 to \$164,500.¹²
29. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$260,100, with \$164,500 allocated to the improvements and \$95,600 allocated to the land component.
30. 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.
31. 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.

¹² 1,566 SF x \$106.67 \$/SF	Base Value	\$167,045
	HVAC	+ \$ 2,646
	Add On value	+ \$ 62,363
	41.82% dep	- \$ 97,035
	NBHD Adj	x 1.0151
	Quality Adj	<u>x 1.2000</u>
Improvement Value		= \$164,500 (rounded)

2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 95,600
<u>Improvements</u>	<u>\$164,500</u>
Total	\$260,100

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 March 27, 2024.

Signed and Sealed: March 27, 2024



Steven A. Keetle, Commissioner