

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

HENRY F. KLAUSCHIE
APPELLANT,

CASE NO: 21R 0624

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 2117440002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$224,200 for tax year 2021.
3. Henry F. Klauschie (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 \$224,200 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 June 6, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Hank Klauschie was 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 Taxpayer alleged that the increase in value of the Subject Property was unreasonable or arbitrary.
17. 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
18. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
19. 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.
20. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.

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).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

21. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the Subject Property.
22. The PRF shows that the Subject Property is a 1,215 square foot ranch style home with a condition rating of average.
23. The Taxpayers presented photographs of the basement, garage ceiling, and streets around the Subject Property.
24. The Taxpayer did not present information to show that the determination of condition made by the County Assessor's office were unreasonable or arbitrary.
25. The Taxpayer alleged that the value of the Subject Property should be reduced based on the condition of the surrounding streets and the potential for a street repair assessment on the Subject Property.
26. The Subject Property is located in a neighborhood where the streets are asphalt and not constructed to current City of Omaha standards.
27. The Subject Property is a triangle shaped lot with streets on two of the three sides of the lot.
28. The Taxpayer presented a letter from the City Clerk regarding the potential creation of a street improvement district and the potential costs for street improvements. This street improvement district could impose a portion of the cost for street improvements on the Subject Property.
29. The Taxpayer discussed the potential cost of street improvements if they were made and the portions of those costs that could be imposed on the Subject Property.
30. The Taxpayer stated that the required number of residents had not approved the creation of the street improvement district the last time approval was proposed.
31. The Taxpayer presented letters from two real estate agents that indicated that the potential for street improvement would have a negative impact on the value of the Subject Property however neither letter provided an unimpacted value of the Subject Property.

32. The County Appraisers stated that the majority of properties in the market area that contains the Subject Property have the same issues with the streets that the Subject Property does.
33. The County Appraisers stated that market area in which the Subject Property was located was reappraised because the recent sales of properties in the market area indicated that values were rising even with the condition of the streets in the area.
34. The County Appraisers stated that these sales indicated the impact of the condition of the streets in the area, and the potential for the creation of the street improvement district, were already accounted for in the assessed values of the properties in the market area, including the Subject Property.
35. 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.
36. 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	\$ 83,600
<u>Improvements</u>	<u>\$140,600</u>
Total	\$224,200

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

Signed and Sealed: July 7, 2023



Steven A. Keetle, Commissioner