

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

RICHARD A. CARSTENS,
APPELLANT,

CASE NO: 21R 0669

V.

DECISION AND ORDER
AFFIRMING 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 0611370626.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$861,500 for tax year 2021.
3. Richard A. Carstens (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 \$861,500 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 December 9, 2022, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Richard A. Carstens 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 Subject Property is a residential parcel improved with a 2,391 square foot ranch style residence constructed in 2003. The Subject Property has a quality rating of very good and a condition rating of average.
17. The Taxpayer alleged that foundation problems with the garage of the Subject Property caused water damage that rendered the living space under the garage uninhabitable and should reduce the value of the Subject Property.
18. The Taxpayer presented photographs showing water damage to finished living area. The Taxpayer stated that the photographs showed space underneath the garage and represented the condition of that area as of the assessment date.
19. The Taxpayer did not present information regarding the extent of the foundational issues, the cost to repair, or continuing damage to the Subject Property.
20. 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 residential properties in the area, including the Subject Property.

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).

21. The County Appraiser stated that the market area in which the Subject Property is located was reappraised for tax year 2021.
22. The County Appraisers stated that when the County Assessor's office was made aware of the water damage shown in the photographs the basement finish under the garage was removed and the condition rating of the Subject Property was reduced to average to account for the damage.
23. Account notes in the PRF indicate that the bathrooms and fixtures that had been in the living area under the garage had been removed in 2017, and the PRF shows two- and one-half baths for the current assessment year.
24. The Taxpayer has not demonstrated that the water damage to the living area under the garage had not been considered when determining the value of the Subject Property.
25. The Taxpayer alleged that the assessed value of the Subject Property was not supported by recent comparable sales.
26. The County Board presented a list of recent sales in the market area of the Subject Property.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
28. "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
29. Sales listing information or the PRFs for the sold properties were not presented by the Taxpayer or the County Board. Accordingly, the Commission cannot see the basis for the determination of assessed value for the sold properties or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the

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).

contribution of the different characteristics, such as age, garages, basement finish, etc., of the sold properties to the Subject Property.¹¹

30. The County Appraisers stated that the per square foot assessed value of the Subject Property was lower than the median sales price per square foot for the market area.
31. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not supported by recent sales.
32. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties of a similar age.
33. The Taxpayer did not present the PRFs for the properties discussed for equalization purposes. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties discussed by the Taxpayer for equalization purposes 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.¹²
34. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with those of other comparable properties.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 13, 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.*

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 13, 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.*

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	\$133,500
<u>Improvements</u>	<u>\$728,000</u>
Total	\$861,500

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 6, 2023.

Signed and Sealed: December 6, 2023



Steven A. Keetle, Commissioner