

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

MARK CELINCAK,
APPELLANT,

CASE NO: 21R 0679

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 0641160000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$374,000 for tax year 2021.
3. Mark Celinscak (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 \$374,000 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 January 11, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Mark Celinscak 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 2,238 square foot two story residence constructed in 1954 and last remodeled in 2020. The Subject Property has a quality rating of good and a condition rating of very good.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessed value 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
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
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, including the last two sales of the Subject Property. This information was used to determine the

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

value attributed to each of the characteristics of residential properties in the area, including the Subject Property.

21. The County Appraiser stated that the market area in which the Subject Property is located was reappraised for tax year 2020 and that the last full reappraisal of the Subject Property was in 2013.
22. The Taxpayer stated that the Subject Property did not have a sprinkler system as listed on the PRF.
23. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on the condition of the improvements.
24. The Taxpayer discussed the renovations done to the Subject Property prior to the Taxpayer's purchase.
25. The Taxpayer presented photographs of the furnace and water heater, as well as floors on the first and second levels of the Subject Property.
26. The Taxpayer discussed plumbing issues and presented photographs of water in the basement of the Subject Property.
27. The Taxpayer presented partial estimates for the stabilization of the floors of the Subject Property, repair of the radon mitigation system and tree removal.
28. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs, the condition rating of very good accounted for the condition Subject Property as shown in the photographs presented.
29. The County Appraisers stated that the County Assessor's office neither added nor subtracted value for trees on the Subject Property.
30. The Taxpayer alleged the assessed value of the Subject Property was not equalized with other comparable properties.

31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
32. “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.”¹³
33. The Taxpayer presented the PRF for four properties located near the Subject Property as comparables.
34. The County Appraisers stated that two of these properties presented as comparables were located in a different market area than the Subject Property and therefore would not be comparable to the Subject Property due to differences in market factors in each market.
35. The PRFs presented show that the Subject Property has the highest condition rating of all of the properties presented, and that this, in addition to the differences in square footage and other amenities such as decks, fireplaces and porches accounts for the difference in assessed values between the Subject Property and the other properties presented.
36. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with other comparable properties.
37. The Commission finds that the value of the improvements should be reduced by \$4,200¹⁴ for the stabilization of the floors and repair of the radon mitigation system and by \$2,100¹⁵ to remove the value of the sprinkler system for an improvement value of \$284,800 which when added to the land component

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ $\$3,754.35$ (floor stabilization) + $\$3,245.08$ = $\$6,999.43$ - $\$1,617.56$ (23.11% Depreciation) = $\$5,381.87$ x 0.7764 NBHD Adjustment = $\$4,200$ (rounded)

¹⁵ $\$3,500$ (Sprinkler) - $\$808.85$ (23.11% Depreciation) = $\$2,691.50$ x 0.7764 NBHD Adjustment = $\$2,100$ (rounded)

value of \$82,900 would result in a total assessed value of \$367,700 for tax year 2021.

38. 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.
39. 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.
2. The taxable value of the Subject Property for tax year 2021 is:

| | |
|---------------------|------------------|
| Land | \$ 82,900 |
| <u>Improvements</u> | <u>\$284,800</u> |
| Total | \$367,700 |

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 28, 2023.

Signed and Sealed: December 28, 2023



Steven A. Keetle, Commissioner