

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

JOHN K. KADEY,  
APPELLANT,

CASE NOS: 21R 0755  
& 22R 0843

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING THE DECISIONS  
OF THE DOUGLAS COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 1643040002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$167,600 for tax year 2021 and \$286,000 for tax year 2022.
3. John K. Kadey (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$167,600 for tax year 2021 and \$286,000 for tax year 2022.
5. The Taxpayer appealed the determinations 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. John Kadey 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 3,534 square foot two and one-half story residence. The Subject Property had a quality rating of average and a condition rating of worn out for tax year 2021, and a quality rating of good and a condition rating of worn out for tax year 2022.
17. The Taxpayer alleged that the increase in assessed value, both as a total number and as a percentage increase, from the prior assessments, particularly as compared to other nearby properties, was unreasonable or arbitrary.
18. The County Board presented the 2021 and 2022 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, for each of the tax years on appeal.
19. The County Appraisers stated that it was determined by the County Assessor's office that values in the Subject Property's market area were undervalued and the entire market area reassessed for tax year 2021 and 2022.

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

20. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>
21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
22. The Taxpayer provided a list of properties near the Subject Property that had lower percentage assessed value increases than the Subject Property.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.
24. The Taxpayer did not provide the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property.<sup>13</sup>
25. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with other comparable properties.
26. The Taxpayer presented a list of the land value per acre of other properties located near the Subject but did not present the PRF for any of those properties to the Commission.

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<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

<sup>13</sup> 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. Without the details contained in the PRF regarding the land components of the properties listed, the Commission is unable to determine the characteristics of these land components and whether the properties discussed are comparable to the Subject Property.<sup>14</sup>
28. The Taxpayer alleged that the assessed value of the improvements on the Subject Property were too high based on necessary repairs and condition.
29. The Taxpayer discussed repairs that the Subject Property needed such as a new roof and the condition of the Subject Property which was of a restoration project that was a work in progress.
30. The County Appraisers discussed the quality and condition ratings of the Subject Property for each of the years before the Commission.
31. The County Appraisers stated that based on the reappraisals of the market area in which the Subject Property was located the quality rating of the Subject Property was changed from average to good.
32. The County Appraisers stated that even though the Subject Property was inhabited the condition rating of the Subject Property was worn out, a rating typically only assigned to uninhabitable properties, due to the extensive nature of the restoration project.
33. The Taxpayer has not presented information to demonstrate that the condition rating of worn out for the Subject Property for tax year 2021 and 2022 was arbitrary or unreasonable.
34. 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.

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<sup>14</sup> 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.*

35. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

**IV. ORDER**

**IT IS ORDERED THAT:**

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 55,700
<u>Improvements</u>	<u>\$111,900</u>
Total	\$167,600

3. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 55,700
<u>Improvements</u>	<u>\$230,300</u>
Total	\$286,000

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2021 and 2022.

8. This Decision and Order is effective on March 29, 2024.

Signed and Sealed: March 29, 2024



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Steven A. Keetle, Commissioner