

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

JAMES MAREK,
APPELLANT,

CASE NO: 21R 0759

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 0815860000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$94,200 for tax year 2021.
3. James Marek (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 \$85,000 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 13, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. James Marek was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) was 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 720 square foot raised ranch style residence constructed in 1953. The Subject Property has quality and condition ratings of average.
17. The Taxpayer alleged that the Subject Property was being assessed at a greater price per square foot than other comparable properties.
18. The Taxpayer presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property, the value attributed to those characteristics and an exterior photo.
19. The Taxpayer presented photographs of a corner of the kitchen and basement of the Subject Property.
20. The Taxpayer presented information from the County Assessor's web site for three properties that he alleged were superior to the Subject Property yet rated the same or lower in quality and condition.
21. The Taxpayer did not present the PRFs for the properties on the tables presented. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different

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).

characteristics of the properties contained in the Taxpayers chart to the Subject Property.⁹

22. The information that the Taxpayer did present shows properties staged for sale or rent, but do not show that the quality or condition ratings of the Subject Property, or the three properties without PRFs, were unreasonable or arbitrary.
23. The information presented for the Subject Property and the properties without PRFs show differences in valuation based on age, quality, condition, and location.
24. The Taxpayer presented the PRF and sales information from a local realtor that included interior photographs of the property next door to the Subject Property.
25. The PRF for the property next door shows that it has a higher condition rating than the Subject Property which resulted in a higher assessed value per square foot than the Subject Property.
26. The Taxpayer presented the PRF for a property on Grant Street (the Grant Street Property) built in the same year with the same square footage as the Subject Property that has a lower assessed value both overall and on a square foot basis. The Taxpayer presented interior photographs of this property from a rental listing.
27. The Taxpayer alleged that the Grant Street Property was superior to the Subject Property.
28. The PRF for the Grant Street Property shows that it is a different style of construction than the Subject Property and has lower quality and condition ratings than the Subject Property.
29. While the interior of the Grant Street Property as shown in the interior photographs look nice, when viewed along with the exterior photographs the County Assessor's determination of fair for quality and condition are not unreasonable or arbitrary.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 19, 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.*

30. Likewise, the interior of the Subject Property as shown in the interior photographs are extremely limited and when viewed along with the exterior photographs, the County Assessor's determination of fair for quality and condition are not unreasonable or arbitrary.
31. The Taxpayer has not shown that the Subject Property is being valued at a higher amount than superior property or that the assessed value of the Subject Property is not equalized with other comparable properties.
32. The County Board requested that the assessed value of the Subject Property be returned to the value determined by the County Assessor prior to board action.
33. The County Appraisers stated that the value determined by the County Board was lower than the equalized value of the Subject Property and would result in a value that was not equalized with other comparable properties.
34. The only other properties with PRF's provided are either superior or inferior to the Subject Property based on their characteristics and amenities.
35. These PRFs show that the value of the Subject Property, both overall and on a per square foot basis is higher than the inferior property and lower than the superior property.
36. The County Board has not demonstrated that the assessed value of the Subject Property after County Board action is not equalized with other comparable properties.
37. The Taxpayer alleged that the Subject Property was entitled to a locational discount to its land value based on its location with a southern border on Blondo Street.
38. The Taxpayer presented information from the County Assessor's web site showing that properties located on Blondo Street were given a locational discount in tax year 2017.

39. The assessed value for real property may be different from year to year according to the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹
40. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
41. The Taxpayer presented no information to show that any property located on or adjacent to Blondo Street was given a locational discount in tax year 2021.
42. 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.
43. 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	\$ 7,900
<u>Improvements</u>	<u>\$77,100</u>
Total	\$85,000

¹⁰ *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).

¹¹ *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).

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

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