

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

TAMASINE M. CLEMENS,
APPELLANT,

CASE NO: 21R 0773

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 2540385952.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$251,700 for tax year 2021.
3. Tamasine M. Clemens (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 \$251,700 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 February 22, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Tamasine (Tammy) Clemens 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 2,014 square foot two story residence constructed in 1999. The residence has quality and condition ratings of average.
17. The Taxpayer alleged that the value of the Subject Property should be reduced because the Subject Property has had no recent updates or improvements.
18. The Taxpayer did not provide photographs, estimates for repairs or other information that would go to the condition of the Subject Property.
19. The PRF shows that the Subject Property is rated at average condition.
20. The Taxpayer did not demonstrate that the County Assessor's determination of average condition for the Subject Property was unreasonable or arbitrary.
21. The Taxpayer alleged that the increase in value of Subject Property from the prior assessed value, particularly as compared to the increase in value for other comparable properties, was unreasonable or arbitrary.
22. 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

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).

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.

23. 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.
24. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.
25. 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
26. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
27. The Taxpayer presented a list of 53 properties, fifty of which are in the same subdivision as the Subject Property. The Taxpayers list shows the address, assessed values, year built, bedroom and bathroom count, and square footage of the properties.
28. The Taxpayer did not present the PRFs for the properties presented on the list. Accordingly, the Commission cannot see the basis for the determination of assessed value for the improvements on these properties presented by the Taxpayer or compare their characteristics to the characteristics of the improvements on the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the improvements on these properties

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)

contained in the Taxpayers chart to the improvements on the Subject Property.¹³

29. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
30. “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.”¹⁵
31. The Commission is unable to find that any of the properties presented are comparable to the Subject Property or the adjustments to value that would make them comparable to the Subject Property.
32. The Taxpayer’s chart shows that the Subject Property has the lowest value per square foot of any property in the subdivision that was presented.
33. The only property presented by the Taxpayer that has a lower value per square foot than the Subject Property is in a different subdivision and market area than the Subject Property. As noted above the PRF for this property was not provided to enable the Commission to know its characteristics such as age, quality, condition, and other amenities.
34. The Subject Property has a lower value per square foot than any property mentioned in the recommendation of the referee coordinator adopted by the County Board.
35. The County Board presented a list of validated sales that occurred in the same market area as the Subject Property.

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 29, 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.*

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁵ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

36. The County Board list shows that there were no recent sales of two-story properties in the Subject Property's market area.
37. The County Board list shows that the Subject Property is newer than any of the properties sold in the market area.
38. The County Board list shows that the Subject Property has a lower per square foot value than the assessed value of all but one of the recently sold properties.
39. The Taxpayer alleged that the value of the Subject Property should be reduced because it is the only two-story property in the subdivision.
40. The County Board list shows that the Subject Property has a lower per square foot value than the one and one-half story, split level, multi-level, and tri-level properties in the market area.
41. The Taxpayer did not present information to show that the value of the Subject Property should be reduced because it is the only two-story property in the market area.
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	\$ 30,000
<u>Improvements</u>	<u>\$221,700</u>
Total	\$251,700

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 September 8, 2023.

Signed and Sealed: September 8, 2023



Steven A. Keetle, Commissioner