

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

JOSEPH A. MORRIS,
APPELLANT,

CASE NO: 21R 0907

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 1804792300.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$195,700 for tax year 2021.
3. Joseph A. Morris (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 \$195,700 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 April 6, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joseph Morris 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 an 1,806 square foot tri-level style residence constructed in 1972. The Subject Property has quality and condition ratings of average.
17. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with another comparable property.
18. The Taxpayer presented photographs of the interior of the Subject Property and a property that recently sold at 3210 S 130th Ave. The Taxpayer alleged that the property at 3210 S 130th was superior to, yet assessed at a lower total value than the Subject Property.
19. The Taxpayer did not present the PRFs for the properties listed in the chart presented. Accordingly, the Commission cannot see the basis for the determination of assessed values or compare their characteristics to the characteristics of the Subject Property as used to determine assessed values. For example, the Subject Property has approximately 200 more above ground living space. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.⁹

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

20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
21. “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.”¹¹
22. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties.
23. The Taxpayer alleged that the characteristics of the Subject Property are incorrect.
24. The Taxpayer stated that the Subject Property experienced flooding in the basement and that in order to remediate the damage the basement finish was removed and had not been replaced as of the assessment date.
25. The Taxpayer provided photographs of the basement in the same condition it was in as of the assessment date.
26. The Taxpayer did not present estimates to replace the removed basement finish.
27. The County Appraiser stated that there had been foundation and plumbing work done on the Subject Property prior to the assessment date.
28. The Commission finds that the value of the basement finish should be removed from the assessed value of the Subject Property.
29. The Taxpayers allege that a half bath had been removed from the Subject Property reducing its bathroom count.

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.

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

30. The Taxpayers did not present information regarding the cost of replacing the basement half bath.
31. The PRF does not show the amount of value added to the assessed value due to the additional half bath.
32. The Commission finds that the value of the improvement should be reduced by \$10,700.¹²
33. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$185,000, with \$19,200 allocated to the land component and \$165,800 allocated to the improvements.
34. 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.
35. 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	\$ 19,200
<u>Improvements</u>	<u>\$165,800</u>
Total	\$185,000

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas

¹² \$17,094 (basement finish) - \$5,853 (34.24% depreciation) = \$11,241 x 0.9531 NBHD adj = \$10,700 (rounded)

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 May 24, 2024.

Signed and Sealed: May 24, 2024



Steven A. Keetle, Commissioner