

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

FREDRICK W. HAWLIK,
APPELLANT,

CASE NO: 21R 0957

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 2224440000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$268,500 for tax year 2021.
3. Fredrick W. Hawlik (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 \$268,500 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 March 8, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Teresa Hawlik 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 1,524 square foot ranch style property constructed in 1962. The Subject Property has quality and condition ratings of average.
17. 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. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
18. The Taxpayers stated that the characteristics of the Subject Property shown on the PRF were incorrect.
19. The Taxpayer stated that the Subject Property did not have a sprinkler system and discussed the areas of the basement that were finished and the areas that were unfinished.
20. The Commission finds that the value of the Subject Property should be reduced by \$7,400⁹ to account for the value of the sprinkler system and changing the amount of basement finish to

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 \$3,500 (Sprinklers) – \$1,331 (38.02% Depreciation) = \$2,169 x 1.0708 NBHD Adj = \$2,323 (sprinkler value).

200 sq ft basement finish x \$38,21 psf = \$7,624 - \$2,905 (38.02% Depreciation) = \$4,737 x 1.0708 NBHD Adj = \$5,072 (basement finish value).

\$2,323 (sprinkler value) + \$5,072 (basement finish value) = \$7,400 (Rounded).

1,000 square feet, which would result in an improvement value of \$214,500 after this adjustment.

21. The Taxpayer alleged that the value of the Subject Property should be reduced due to its condition.
22. The Taxpayer discussed the condition of the windows, flooring, doors, built ins, and heating and cooling issues with portions of the living area.
23. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable.
24. The Taxpayer alleged that the Subject Property is being over valued due to the purchase price from their 2017 purchase of the property, which was made due to factors outside of the value of the real property.
25. The County Board presented a listing of recent sales used in determining values for the Subject Property's market area for the 2021 assessments. The sale of the Subject Property is not on this list of recent sales.
26. The County Appraisers stated that the sale of the Subject Property was not used to determine assessed values for the 2021 assessment as it was too far from the assessment date to be considered for the 2021 assessments. The County Appraisers further stated that the 2021 assessed value of the Subject Property was lower than the 2017 purchase price.
27. The Taxpayer alleges that the assessed value of the improvements on the Subject Property are not equalized with other comparable properties.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
29. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject

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

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

30. The Taxpayer presented a table with information for eight other properties he alleged were comparable to the Subject Property but assessed at a lower amount per square foot than the Subject Property
31. 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. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹²
32. The information that the Taxpayer did present from the County Assessors web site supports the position that the differences in valuation are due to differences in characteristics between the properties, such as condition, style of construction, or amenities such as amount and quality of basement finish.
33. For example, of the three properties on the table presented by the Taxpayer that were alleged to be the most comparable one has a fair condition rating and much less basement finish, one has a poor condition rating and a less and lower quality basement finish, and the third is a different style of construction and has less basement finish than the Subject Property.

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

¹² 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.*

34. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties.
35. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$261,100, with \$214,500 allocated to the improvement component and \$46,600 for the land component.
36. 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.
37. 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	\$ 46,600
<u>Improvements</u>	<u>\$214,500</u>
Total	\$261,100
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 April 3, 2024.

Signed and Sealed: April 3, 2024



Steven A. Keetle, Commissioner