

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

ROSE M. WOZNY,
APPELLANT,

CASE NO: 21R 0968

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 0518900000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$126,800 for tax year 2021.
3. Rose M. Wozny (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 \$126,800 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, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Rose M. Wozny 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 1,016 square foot split entry style residence constructed in 1947. The Subject Property has quality and condition ratings of average.
17. The County Board presented the 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, including the sale 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 PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2021.
19. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessed values was unreasonable or arbitrary.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior

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 *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).

year's assessment is not relevant to the subsequent year's valuation.¹⁰

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
22. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
24. "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."¹³
25. The Taxpayer did not present the Property Record File (PRF) or other information for the properties discussed as equalization comparables. 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 characteristics of the properties contained in the Taxpayers table to the Subject Property.¹⁴
26. The Taxpayer alleged that the assessed value of the Subject Property was impacted by its location on Center Street, the

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

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ 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.*

properties across the street, and the diversity of the types of property in the area.

27. The County Board presented a list of recent valid sales in the market area of the Subject Property. Only one sold property has the same style, quality and condition ratings as the Subject Property and that property sold for a higher amount per square foot than the Subject Property's assessed value.
28. The County Appraiser stated that impact on valuation that traffic in the area, properties adjacent to the market area, and the diversity of the types of property in the area would be reflected in all of the sales in the Subject Property's market area.
29. The Taxpayer did not present any other information to quantify any impact its location on Center Street, the properties across the street, and the diversity of the types of property in the area on the value of the Subject Property.
30. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to its condition.
31. The Taxpayer discussed the condition of the Subject Property including the tile in the garage, ceiling tiles in the upstairs bathroom, cracks in the kitchen ceiling, cabinets, mold, and original windows.
32. The Taxpayer also discussed the damage caused by an August 2021 storm and resultant sewer backup in the Subject Property which damaged the finish throughout the basement and basement garage. The Taxpayer included a Form 425 (Report of Destroyed Real Property) and insurance claim information for the basement damage.
33. As noted earlier the Commission must look to the value of the Subject Property as of January 1 of each tax year.¹⁵

¹⁵ Neb. Rev. Stat §77-1301(Reissue 2018).

34. The 2021 flood damage discussed by the Taxpayer occurred after the assessment date and after the July 1 date for incurring and July 15 deadline for reporting destroyed real property.¹⁶
35. The Taxpayer did not present any photographs of the repairs and maintenance issues present in the Subject Property as of the assessment date and did not present any estimates for repairs discussed.
36. The Commission finds that the evidence presented of the repairs and maintenance discussed do not demonstrate by clear and convincing evidence that the condition rating of average was arbitrary or unreasonable.
37. 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.
38. 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	\$ 14,700
<u>Improvements</u>	<u>\$112,100</u>
Total	\$126,800

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

¹⁶ See, Neb. Rev. Stat. §77-1307 through §77-1309 (2022 Cum. Supp.)

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 29, 2024.

Signed and Sealed: May 29, 2024



Steven A. Keetle, Commissioner