

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

JACQUELYN E. GORDON,  
APPELLANT,

CASE NO: 21R 0969

V.

DECISION AND ORDER  
REVERSING 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 0910130000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$256,300 for tax year 2021.
3. Jacquelyn E. Gordon (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 \$256,300 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 24, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Nick and Jacquelyn Gordon were 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 1,428 square foot one- and one-half story residence constructed in 1931. The Subject Property has a quality rating of average and a condition rating of very good.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property, as compared to the increase in value for other properties, from the prior assessed value was unreasonable or arbitrary.
18. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
20. 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

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018).

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.

21. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.
22. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to its condition.
23. The Taxpayers discussed the condition of the Subject Property including the trim, paint, and gutters, the roof, wiring, foundation, furnace, air conditioning, chimney, wood floors, floor tile, and doors.
24. The Taxpayers presented a residential inspection report prepared prior to the 2020 purchase of the Subject Property. The inspection report contains narrative as well as photographs showing areas of concern regarding the condition of the Subject Property as well as remediation actions taken by the inspector for some of the items.
25. The Taxpayers presented photographs of the Subject Property including the basement, floor tile, wood floors, bricks and brick pointing, garage, furnace as of the assessment date,<sup>13</sup> and water heater.
26. The Taxpayers presented the 2020 and 2021 PRF for the Subject Property and the 2020 and 2021 PRF of four comparable properties that all sold in 2020.
27. The County Appraisers discussed the 2020 MLS listing of the Subject Property, specifically the refinishing of the woodwork, and minimal deferred maintenance shown on the photographs in the MLS listing. The 2020 MLS listing was not presented to the Commission to review.

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<sup>13</sup> The Taxpayer stated that the furnace and air conditioner were replaced after the assessment date.

28. Based on the information presented the Commission finds that the condition rating of very good for the Subject Property was unreasonable for tax year 2021.
29. The Commission finds that a condition rating of good for the Subject Property for tax year 2021 reflects the condition of the property based on all of the information presented at the hearing.
30. The County Appraisers stated that a reduction in the condition rating of the Subject Property would increase the physical depreciation applied when valuing the property with the County Assessors valuation model for tax year 2021.
31. Based on a review of all the information presented, including but not limited to the discussion of the physical depreciation rate and the rates applied to all of the properties presented, the value of the Subject Property with a condition rating of good would be determined by using the County Assessor's 2021 assessment model with a physical depreciation of 35.30%.
32. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$239,300 with a value of \$202,900<sup>14</sup> for the improvement component and \$36,400 for the land component.
33. 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.
34. 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.

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<sup>14</sup>  $\$266,312$  (Base Value + HVAC + Total Add-On) x 35.30% physical depreciation =  $\$94,008$ .  
 $266,312 - \$94,088 = 172,304$  x 1.1775 NBHD Adjustment =  $\$202,900$  (rounded)

**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	\$ 36,400
<u>Improvements</u>	<u>\$202,900</u>
Total	\$239,300

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 February 22, 2024.

Signed and Sealed: February 22, 2024



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Steven A. Keetle, Commissioner