

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

JODI L. KRANCE
APPELLANT,

CASE NO: 22R 0164

V.

**DECISION AND ORDER
REVERSING THE DECISION
OF THE POLK COUNTY
BOARD OF EQUALIZATION**

POLK COUNTY BOARD OF
EQUALIZATION,

AND

ALAN HENGELFELT,
APPELLEES.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Polk County, parcel number 720041559.
2. The Polk County Assessor (the County Assessor) assessed the Subject Property at \$37,800 for tax year 2022.
3. Alan Hengelfelt (the Taxpayer) protested this value to the Polk County Board of Equalization (the County Board) and requested an assessed value of \$21,458 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$27,840 for tax year 2022.
5. The County Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 17, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.

7. Jodi Krance, Polk County Assessor, was present at the hearing.
8. No one appeared for the County Board.
9. No one appeared for Alan Hengefelt.

II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. The Commission's review of a determination of the County Board of Equalization is de novo.²
12. 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
13. 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

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).

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. 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
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Assessor asserted the County Board arbitrarily lowered the value for the Subject Property.
18. The Assessor testified she was unsure whether the County Board inspected the property or why they lowered the condition of the Subject Property.
19. The Assessor testified the County Board did not have any members that were appraisers, realtors, or held an Assessor's Certification.
20. The Assessor testified comparable sales support the assessed value of the Subject Property.
21. The Assessor testified the Taxpayer told the Assessor that the original valuation protest was a mistake, and it was intended for a different property.
22. The County Board did not appear for the hearing and did not submit any evidence in support of their valuation.
23. The Taxpayer did not appear for the hearing and did not submit any evidence in support of the County Board's valuation or any alternative valuation.

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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).

24. The Assessor 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.
25. The Assessor 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 2022 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 11,415
<u>Improvements</u>	<u>\$ 26,385</u>
Total	\$ 37,800

3. This Decision and Order, if no further action is taken, shall be certified to the Polk County Treasurer and the Polk 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 2022.
7. This Decision and Order is effective on October 20, 2023.

Signed and Sealed: October 20, 2023



James D. Kuhn, Commissioner