

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

CARRIE C. POWER,
APPELLANT,

CASE NO: 22R 0420

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 2541795040.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$238,100 for tax year 2022.
3. Carrie C. Power (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 \$238,100 for tax year 2022.
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 August 22, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Carrie Power was present at the hearing for the Taxpayer.
8. Scott Barnes and Lisa Humlicek 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 consisting of a one-and one-half story condo unit in a building constructed in 1892 and remodeled in 2020. The Subject Property has a quality rating of average and a condition rating of good.
17. The Taxpayer stated that the Subject Property is located in a remodeled schoolhouse and that it and the other condominiums in the building each have unique floor plans.
18. The Taxpayer stated that the common areas of the remodeled schoolhouse including the separate garages all have deferred maintenance that would reduce the value of the Subject Property.
19. The Taxpayer stated that she was the president of the homeowner's association for the building in which the Subject Property is located, and discussed the general estimates that had been obtained to address various maintenance and repair items for the building such as paint and siding on the garages, concrete repairs, sandstone repairs, tuckpointing, etc.
20. The Taxpayer did not provide information to demonstrate the impact these common area repair and maintenance items would have on the value of the individual condominium units or the condition rating of the Subject Property.

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).

21. The Taxpayer alleged that the percentage increase in assessed value for the Subject Property, particularly as compared to other properties in the same building, was unreasonable or arbitrary.
22. The Taxpayer presented a list with the addresses and assessed values for properties located in the same building as the Subject Property showing the percentage increases in value from 2019 to 2022 and 2021 to 2022.
23. 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 residential properties in the area, including the Subject Property.
24. The County Appraisers stated that it was determined by the County Assessor's office that values in the Subject Property's market area were undervalued and the entire market area reassessed for tax year 2022.
25. The County Appraisers stated that when a market area is reappraised percentage adjustments are not applied, rather properties characteristics are reviewed and values are redetermined based on characteristics, amenities, and the market for the current tax year.
26. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹

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).

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

27. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
28. The Taxpayer alleged that the other properties were underassessed based on their characteristics.
29. The Taxpayer presented the PRF for two other properties located in the same building as the Subject Property.
30. The PRF for one of the other properties shows a 25% difference between the measured square footage and the amount of square footage assessed for tax year 2022.
31. The County Appraisers stated that the assessment model should have been applied to all properties using the measured square footage shown on the PRFs.
32. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹³
33. The PRFs presented show that the improvements on the Subject Property are assessed at 100% of their value while the improvements on another property in the same building are assessed at 75% of their value.
34. “Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.”¹⁴
35. The Commission finds that the assessed value of the improvements on the Subject Property should be assessed at 75% of its value.

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

¹³ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013); *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 577, 471 N.W.2d 734, 742 (1991).

¹⁴ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

36. The Commission finds that the assessed value of the Subject Property is \$180,000 with \$174,200¹⁵ applied to the improvement component and \$5,800 applied to the land component.
37. 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.
38. 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 2022 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 5,800
<u>Improvements</u>	<u>\$174,200</u>
Total	\$180,000
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 2022.

¹⁵ \$232,300 x 75% = \$174,225 rounded to \$174,200.

7. This Decision and Order is effective on November 15, 2024.

Signed and Sealed: November 15, 2024



Steven A. Keetle, Commissioner