

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

GERALD H. NOVAK,  
APPELLANT,

CASE NO: 22R 0447

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 1616447524.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$300,500 for tax year 2022.
3. Gerald H. Novak (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 \$300,500 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 March 7, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Gerald H. Novak 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.<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 1,684 square foot two story townhouse that is part of a condominium project.
17. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
18. 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.
19. The County Appraisers stated that it was determined by the County Assessor's office that properties in the Subject Property's market area were undervalued and all properties in the area were reassessed for tax year 2022.
20. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2022.
21. The valuation history further indicates that the market area in which the Subject property is located was reappraised for tax year 2020, but the County Board reduced the assessed value of the Subject Property to its 2019 assessed value, which was

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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).

- determined in tax year 2013. The basis for this County Board action was not presented to the Commission.
22. 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>
  23. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
  24. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to deferred maintenance.
  25. The Taxpayer did not present photographs or repair estimates for the Subject Property.
  26. The PRF shows that the County Assessor's Office has given the Subject Property a condition rating of average.
  27. The Taxpayer did not present any information to show that the condition rating of average for the Subject Property was unreasonable or arbitrary.
  28. The Taxpayer alleged that the value of the Subject Property should be reduced based on the insured value.
  29. The Taxpayer did not show what the Subject Property was insured for in the 2022 tax year.
  30. The Taxpayer presented an insurance estimate for less than the assessed amount.
  31. The Taxpayer presented information showing that the Subject Property was insured for more than the 2022 assessed value for 2023.
  32. The Taxpayer did not demonstrate that the value of the Subject Property should be reduced based on insurance information.
  33. The Taxpayer alleged that the assessed value of the Subject Property was too high based on online valuation service reports.

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

34. The Taxpayer presented portions of four “Property Reports” and a home mortgage report for the Subject Property obtained online (the Reports). These reports do not indicate how their determinations were made or what factors they used to determine their results. Many characteristics, such as the quality, condition, and garage of the Subject Property are not listed in these reports as factors that were considered.
35. The Taxpayer presented a subdivision sales report containing four recent townhome sales that all sold for a higher per square foot amount than the determinations made by the Property Reports.
36. The recent sales support the valuation determination of the County Board and call into question the Property Reports conclusions.
37. The Commission gives little weight to the conclusions of the Property Reports.
38. The Taxpayer alleged that the valuation of the land component of the Subject Property was not equalized with other similar lots.
39. The Taxpayer presented information from the County Assessor’s web site for an unimproved condominium lot of the same size as the Subject Property and directly adjacent to it that was valued at \$6,800 while the land component of the Subject Property is assessed at \$40,000.
40. 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.<sup>12</sup>
41. The Commission finds that the value of the land component of the Subject Property for tax year 2022 is \$6,800, which when added to the improvement value of \$260,500 would result in a total value of \$267,300.

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<sup>12</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

42. 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.
43. 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	\$ 6,800
<u>Improvements</u>	<u>\$260,500</u>
Total	\$267,300

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 2022.
7. This Decision and Order is effective on August 30, 2023.

Signed and Sealed: August 30, 2023



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Steven A. Keetle, Commissioner