

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

DIANE K. BETTERMAN
APPELLANT,

CASE NO: 22R 0460

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 1405591839.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$455,700 for tax year 2022.
3. Diane K. Betterman (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 \$455,700 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 May 23, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. W. Patrick Betterman, Attorney, was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (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 improved with a 3,246 square foot one and one-half story style residence constructed in 1999.
17. The Taxpayer alleged that the County's determination of the condition of the Subject Property was incorrect and should be average rather than good.
18. The Taxpayer presented a document prepared by Nicholas J. Dizona, General Certified Appraiser, that included a Supplemental Text Addendum discussing the condition of the Subject Property and depreciation methodology, photographs of the Subject Property, a map of the location of the Subject Property, and a sketch of the improvements (Dizona's Document).
19. Dizona was present at the hearing and discussed his inspection of the Subject Property, the subdivision in which the Subject Property is located, and his determination of the condition of the Subject Property.
20. Dizona stated that the condition rating of the Subject Property should be average.
21. 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

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).

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.

22. The PRF shows that the Subject Property is a 3,246 square foot one and one-half story home with a condition rating of good.
23. The County Appraisers, after reviewing the information presented at the hearing, stated that the condition rating of the Subject Property should be reduced from good to average for tax year 2022.
24. The County Appraisers stated that with a condition rating of average the valuation model used to value the Subject Property would produce a valuation of \$374,400 for the improvements which, when combine with the \$65,000 land value would result in a valuation of \$439,400 for tax year 2022.
25. The Commission finds that the condition rating of the Subject Property for tax year 2022 is average.
26. The Taxpayer alleged that the replacement cost new methodology utilized by the County Assessor improperly utilized the effective age of the Subject Property and resulted in an arbitrary or unreasonable depreciation rate using the Marshall and Swift Residential Cost Manual.
27. Dizona's Document indicates that the physical depreciation rate utilized by the County on the PRF is inconsistent with the depreciation he determined using the Subject Property's age, remodel history, and condition.
28. Dizona speculated that a value of \$390,000 could be determined using Marshall and Swift. Dizona stated that this determination would not include a market adjustment. It is unclear from the record how this speculated value was arrived at and there was not an appraisal report or opinion of value, certified as performed according to professional standards by Dizona, presented at the hearing.

29. The County Appraisers stated that their valuation model used Marshall and Swift costs as a basis for the mass appraisal model, but that the depreciation rates utilized were derived from market data rather than Marshall and Swift depreciation tables.
30. The County Appraisers further stated that the County Assessor's valuation model used a NBHD adjustment to further account for market impacts on value.
31. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
32. The Taxpayer presented the PRF for five properties from the Subject Property's market area whose values the Taxpayer alleged were not equalized with the Subject Property.
33. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
34. "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."¹⁰
35. A review of the PRF of the Subject Property and the PRFs for the other properties presented show that the differences in the assessed value of the Subject Property and the other properties is due to the differences in characteristics and amenities such as age, style and type of construction, condition, garage size, basement finish, decks, patios, fireplaces, etc.
36. The Taxpayer has not demonstrated that assessed value of the Subject Property is not equalized with other comparable properties.
37. The Commission finds that the assessed value of the Subject Property for tax year 2022 is \$439,400 with \$65,000 allocated to

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

the land component and \$374,400 allocated to the improvements.

38. 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.
39. 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 reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 65,000
<u>Improvements</u>	<u>\$374,400</u>
Total	\$439,400

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 May 29, 2024.

Signed and Sealed: May 29, 2024



Steven A. Keetle, Commissioner