

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

SCOTT J. FASSE ET AL
TRUST,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 22R 0577

DECISION AND ORDER
AFFIRMING 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 2225570413.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$857,100 for tax year 2022.
3. Scott J. Fasse et al Trust (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 \$857,100 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 23, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Scott Fasse was present at the hearing for the Taxpayer.
8. Kurt Skradis and Tim Tran 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 6.69-acre residential parcel improved with a 4,347 square foot two story residence constructed in 1978 and 3,200 square foot barn constructed in 1983. The residence has quality and condition ratings of good and the barn has a quality rating of good and condition rating of average.
17. The Taxpayer did not contest or present information regarding the value of the improvements on the Subject Property.
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 Taxpayer alleged that the value of the Subject Property should be reduced because it is zoned for agricultural use.
20. The Taxpayer stated that the Subject Property is not used for commercial agricultural or horticultural production.
21. The County Appraisers stated that no application for special valuation status was filed for the Subject Property.⁹

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).

⁹ See, Neb. Rev. Stat. §77-1345 (Reissue 2018).

22. The Subject Property does not meet the requirements to be assessed as agricultural or horticultural land.¹⁰
23. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to the lack of services in the area.
24. The Taxpayer stated that while houses on the next street to the south of the Subject Property received city services the Subject Property did not have city services.
25. The Taxpayer did not present information to allow the Commission to quantify any impact on value caused by the differences in availability of city services in the area.
26. The Taxpayer alleged that the value of the land component of the Subject Property was not equalized with the value of the land component of other comparable properties.
27. The Taxpayer presented information on the valuation of the land components of three properties near the Subject Property.
28. The County Appraisers stated the size of residential parcel in the area had an impact on market values and that the land component of residential properties in the area were therefore assessed differently based on the size of the parcel. Parcels larger than 5 acres were assessed differently than parcels smaller than 5 acres due to different market influences.
29. These three parcels presented as comparables by the Taxpayer were smaller than 5 acres and the Subject Property is 6.69 acres.
30. The Commission finds that the land component of these remaining three parcels is not comparable to the land component of the Subject Property.
31. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
32. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

¹⁰ Neb. Rev. Stat §77-1359 (Reissue 2018).

unreasonable and the decision of the County Board should be affirmed.

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 affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$240,800
<u>Improvements</u>	<u>\$616,300</u>
Total	\$857,100

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 November 26, 2024.

Signed and Sealed: November 26, 2024



Steven A. Keetle, Commissioner