

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

THOMAS M. WAKELEY,
APPELLANT,

CASE NO: 22R 0578

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 1305260577.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$386,900 for tax year 2022.
3. Thomas M. Wakeley (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 \$386,900 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 July 17, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Tom Wakeley and Mary Thielen were present at the hearing for the Taxpayer.
8. Scott Barnes and James Morris 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 3.333-acre residential parcel improved with an 1,813 square foot ranch style residence constructed in 2005.
17. 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.
18. 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.
19. The Taxpayer did not challenge the valuation of the improvements on the Subject Property but only alleged that the land value of the Subject Property was not equalized with the land value of other comparable properties.
20. The Taxpayer presented the Property Record Files (PRF) for eleven properties located within three miles 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. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
22. The PRFs for the Taxpayer's comparable properties indicate that all but two of these properties are classified as rural residential while the Subject Property is classified as residential.
23. The County Appraisers stated that the rural residential properties presented are in a different market area than the Subject Property.
24. The County Appraisers stated that the rural residential properties presented are between two and three miles from the Subject Property, have different types of properties surrounding them and are all closer to a rural stretch of the interstate than the Subject Property.
25. The County Appraisers stated that properties classified as rural residential are subject to different market forces and are assessed using a different assessment model than the Subject Property and other properties classified as residential.
26. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.
27. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
28. The two remaining properties presented by the Taxpayer are located to the east and west of the Subject Property and are each classified as residential lots in the same market area as the Subject Property, however the property to the east is larger than the Subject Property and not given the same prime site characteristic as the Subject Property.
29. The PRF's and report of county board of equalization action contained in the County Board packet show that the land value

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

of the Subject Property and the property to the west were equalized prior to County Board action, with the referee indicating that as a reason for making no change to the value of the Subject Property.

30. The PRF for the property to the west indicated that the County Board subsequently took action lowering the value of the land component of the property to the west to 84 percent of its value.
31. In *Zabawa v. Douglas County Board of Equalization*, the Nebraska Court of Appeals held that “By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.”¹⁰ The Court determined that the remedy was to reduce the assessed valuation of Zabawa’s property to the same percentage of value as that of the comparable property.¹¹
32. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$114,300,¹² which, when added to the \$250,500 value of the improvement component, would result in a total equalized value for the Subject Property of \$364,800 for tax year 2022.
33. 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.
34. 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.

¹⁰ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹¹ *Id.*, at 229, 529.

¹² \$136,400 x 84% = \$114,332 rounded to \$114,300.

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	\$114,300
<u>Improvements</u>	<u>\$250,500</u>
Total	\$364,800

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 October 22, 2024.

Signed and Sealed: October 22, 2024



Steven A. Keetle, Commissioner