

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

DOUGLAS R. CLARK,
APPELLANT,

CASE NO: 22R 0604

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 0843930002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$645,700 for tax year 2022.
3. Douglas R. Clark (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 \$645,700 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 25, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robin E. Clark 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 1.¹
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 2,960 square foot two story residence constructed in 1930. The Subject Property has quality and condition ratings of good.
17. The Taxpayer alleged that the increase in assessed value from the prior assessment 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 values in the Subject Property's market area were undervalued and the entire market area reassessed for tax year 2022. The Subject Property was last reappraised and revalued in 2020.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior

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 *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).

year's assessment is not relevant to the subsequent year's valuation.¹⁰

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
22. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on its location near the intersection of 52nd and Blondo Streets.
23. The Taxpayer presented traffic count information for several intersections located near the Subject Property.
24. The County Appraisers stated that the Subject Property did not have frontage on Blondo Street but rather faced N. 53rd Street. The County Appraisers stated that the intersection of 52nd and Blondo was a four way stop without a traffic light. The County Appraisers further stated that sales information from the area did not show that Blondo Street had a measurable negative impact on sales prices in the area.
25. There is no information before the Commission that would quantify the impact of traffic on Blondo Street on the value of the Subject Property.
26. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
27. The Taxpayer presented a spread sheet listing information regarding assessed values for thirty-one parcels located near the Subject Property and sales prices for eight of these parcels.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
29. "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

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

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

more like the subject, its price is brought closer to the subject's unknown value.”¹³

30. The Taxpayer did not present the PRF for the properties presented and discussed. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers table to the Subject Property.¹⁴
31. The Spreadsheet does not contain information such as style (i.e., ranch, two story, etc.) type of construction (i.e., brick, stucco, siding, etc.), quality of construction, basement size and finish, garages, and other amenities that would allow the Commission to determine if the properties presented are comparable or could be made comparable to the Subject Property.
32. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with other comparable properties.
33. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on its condition.
34. The Taxpayer discussed the condition of the Subject Property including the kitchen and other remodeling projects.
35. The County Appraisers stated that based on their review of the characteristics of the Subject Property and the information presented at the hearing that they believed that the condition rating of the Subject Property should be average rather than good for tax year 2022. The County Appraisers stated that if the value of the Subject Property were calculated using a condition

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on April 11, 2023, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

rating of average in the assessment model used for tax year 2022 the assessed value of the Subject Property would be \$595,000, with \$53,100 allocated to the land and \$541,900 allocated to the improvements.

36. The Commission finds that the condition rating of the Subject Property should be reduced from good to average and that based on this change the value of the Subject Property for tax year 2022 is \$595,000.
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	\$ 53,100
<u>Improvements</u>	<u>\$541,900</u>
Total	\$595,000

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.
7. This Decision and Order is effective on June 5, 2024.

Signed and Sealed: June 5, 2024



Steven A. Keetle, Commissioner