

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

JOHN SMOLSKY,
APPELLANT,

CASE NO: 22R 0633

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 1221130000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$537,200 for tax year 2022.
3. John Smolsky (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 \$467,000 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. John Smolsky 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 residential parcel improved with a 2,656 square foot two and one-half story finished style residence constructed in 1924.
17. The Taxpayer alleged that the assessed value of the Subject Property did not reflect market value based on recent sales of comparable properties.
18. The Taxpayer presented a table of information regarding four recent sales of properties in the area.
19. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
20. "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
21. The Taxpayer did not present the Property Record File (PRF) for the four sold properties. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their

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 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).

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.¹¹

22. The information that was presented regarding the four sold properties does not contain information regarding the quality rating, type of construction (i.e., brick, stucco, wood siding, etc), or roof covering. Additionally, there is no information regarding amenities such as fireplaces, garages, amount of basement finish, patios, etc.
23. The County Appraisers stated that only one of the four sold properties presented by the Taxpayer occurred in the time period used by the County Assessor for determining 2022 assessed values but that property was determined to be an invalid sale as it involved a historic property tax credit program and was substantially changed after the sale.
24. The Commission cannot find that the four sold properties presented by the Taxpayer are comparable to the Subject Property.
25. The Taxpayer has not shown that the assessed value of the Subject Property did not reflect market value based on the sales of comparable properties.
26. The Taxpayer discussed the condition of the Subject Property as well as characteristics that were different than those listed for the Subject Property by the County Assessor's office including the roof covering, a second-floor wood deck on listed on the side of the house that was actually a flat roof, and an open slab porch that the Subject Property didn't have.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 14, 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.*

27. The County Appraisers stated that they reviewed the characteristics of the Subject Property and determined that the condition rating of the Subject Property should be lowered to average, the roof covering type changed, and a second-floor wood deck that was actually a section of flat roof should be removed. The County Appraisers further stated that with these changes their new opinion of value for the Subject Property would be \$460,800 for the 2022 tax year.
28. The Commission further determines that the open slab porch that the Taxpayer stated did not exist should be removed as well which would result in a further reduction in the assessed value of the Subject Property by \$1,522¹² for tax year 2022.
29. The Commission finds that the assessed value of the Subject Property for tax year 2022 is \$459,300,¹³ with \$20,600 allocated to the land component and \$438,700 allocated to the improvement component.
30. 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.
31. 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.

¹² \$2,066(Open Slab Porch RCN) - \$895 (43.35% depreciation) = \$1,171 x 1.3053 NBHD adjustment = \$1,522.

¹³ \$460,800 - \$1,522 = \$459,300 rounded

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

Land	\$ 20,600
<u>Improvements</u>	<u>\$438,700</u>
Total	\$459,300

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 October 4, 2024.

Signed and Sealed: October 4, 2024



Steven A. Keetle, Commissioner