

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

MICHAEL HANUS,
APPELLANT,

CASE NO: 22R 0635

V.

DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved agricultural parcel in Douglas County, parcel number 0100970003.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$242,580 for tax year 2022.
3. Michael Hanus (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 \$242,580 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 June 13, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Hanus was present at the hearing for the Taxpayer.
8. Matt Holly 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 an 8.16 agricultural or horticultural parcel with a homesite improved with a 3,008 square foot two story residence constructed in 1890 and a 2,160 square foot barn. The Subject Property has a quality rating of good and a condition rating of poor.
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.
18. The Taxpayer alleged that the County Board denied the Taxpayer due process for tax year 2022.
19. The Summary form for 2022 from the County Board shows that the Taxpayer's protest of his 2022 assessed value which was reviewed by a referee, coordinator, and acted on by the County Board.
20. The Taxpayer alleged that the County Assessor denied the Taxpayer's due process by failing to meet with the Taxpayer.
21. The Taxpayer did not produce information to indicate that he requested a meeting with the County Assessor or requested a preliminary hearing with the County Assessor's office.

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).

22. The Taxpayer alleged that the County Assessor incorrectly determined the amount of agricultural or horticultural land on the Subject Property.
23. The County Appraisers stated that the Subject Property was inspected in preparation for this hearing and future assessment years and it was discovered that a 0.62 acre portion of the Subject Property previously used and classified as farm site acres had been converted to an agricultural or horticultural use and should be classified as 2D1 and valued at its special value which would reduce the total land valuation of the Subject Property to by \$3,180 to \$66,100.
24. The Taxpayer alleged that the value of the Subject Property should be reduced based on its condition and required repairs.
25. The Taxpayer presented photographs of the exterior of the 2-story house located on the Subject Property.
26. 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.
27. The Taxpayer indicated that there were several thousands of dollars of repairs to be made to the wood roof, adding siding, general repairs.
28. The PRF indicates that the property is rated as in poor condition. The County Appraisers stated that the only lower condition rating used for residential properties was worn out used for properties that were unlivable or condemned.
29. The Taxpayer is living in the Subject Property and was as of the 2022 assessment date.
30. There was no information presented to indicate that the Subject Property was condemned as of the assessment date.
31. The Taxpayer has not presented information to demonstrate that the condition rating of poor for the Subject Property for tax year 2022 was arbitrary or unreasonable.

32. The Taxpayer alleged that he was denied access to county records and unable to obtain information regarding comparable properties.
33. The Taxpayer did not provide any information to support the allegation that he was denied access to county records.
34. The Taxpayer alleged that the value of the Subject Property should be reduced due to inordinately high crime in the area, lack of timely police and emergency service response, and other “social values” not being properly reflected in the value of the Subject Property.
35. The Taxpayer did not provide any specific information regarding crime in the area, police and emergency service response times or other information to quantify the impact of these or other “social values” on the value of the Subject Property.
36. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
37. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
38. “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
39. The Taxpayer presented information from the County Assessor’s web site regarding three other properties located throughout the county.
40. The Taxpayer did not present the PRFs for these other properties located throughout the county. Accordingly, the Commission cannot see the basis for the determination of

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).

assessed value of the land component of the properties presented by the Taxpayer.¹¹

41. The information that was provided regarding these additional three properties show that they are of different ages, quality rating, condition rating, style, type of construction, have different amenities, and are all urban residential properties located far from the rural setting of the Subject Property.
42. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
43. The Taxpayer alleged that the assessed value applied to the first acre, or homesite acre, of the Subject Property was arbitrarily too high.
44. The Taxpayer did not present any information regarding a value for the first acre, or homesite acre, of the Subject Property
45. The Taxpayer did not present any information to show that a different value for a first acre, or homesite acre, was applied to any comparable property.
46. Finally, the Taxpayer alleged that he was not provided notice of a valuation change for tax year 2022.
47. The valuation history of the Subject Property shows that the assessed value of the Subject Property did not change from the prior years assessed value for tax year 2022.
48. Notice of valuation change pursuant to Neb. Rev. Stat. § 77-1315 is only required to be provided when assessed value changes from the prior years assessed value.
49. The Commission finds that the assessed value of the Subject Property for tax year 2022 is \$239,400, with \$66,100 allocated to the land component and \$173,300 allocated to the improvements.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 1, 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.*

50. 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.
51. 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	\$ 66,100
<u>Improvements</u>	<u>\$173,300</u>
Total	\$239,400

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 June 12, 2024

Signed and Sealed: June 12, 2024



Steven A. Keetle, Commissioner