

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

TIMOTHY G. BREWER,
APPELLANT,

CASE NO: 22R 0636

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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 1842490006.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$172,200 for tax year 2022.
3. Timothy G. Brewer (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 \$172,200 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 24, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Tim Brewer 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 1,980 square foot ranch style residence constructed in 1959. The Subject Property has quality and condition ratings of average.
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.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰

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).

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).

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 the type and condition of the adjacent roads.
23. The Taxpayer stated that the Subject Property is located on the corner of two unpaved roads. The Taxpayer stated that due to these unpaved roads getting into and out of the Subject Property was hard in the winter and impacted available services. The Taxpayer provided photographs of the roads adjacent to the Subject Property and stated that they showed their condition as of the assessment date.
24. The County Appraisers stated that they were aware that the Subject Property was located on unpaved roads and that the roads were paved starting two blocks to the east of the Subject Property. The County Appraisers presented an aerial map of the Subject Property's market area and discussed which roads were paved and which roads were not.
25. The County Appraisers stated that there were no valid sales located on unpaved roads in the Subject Property's market area to demonstrate that there was a negative impact on values for the current assessment year. The County Appraisers stated that the last valid sale in the market area that was located on an unpaved road was in 2017 and that sale did not indicate a negative impact on value due to the unpaved roads.
26. The Taxpayer offered no other evidence to allow the Commission to quantify any impact the unpaved roads may have on the value of the Subject Property.
27. The Taxpayer alleged that the sale of the property to the north of the Subject Property for less than the assessed value of the Subject Property indicated that the assessed value of the Subject Property was too high.

¹¹ Neb. Rev. Stat §77-1301(Reissue 2018)

28. The Taxpayer did not offer any information regarding this sale other than a sale price of \$155,000 and a statement that the property was larger than the Subject Property and had two houses on it.
29. The sale discussed by the Taxpayer is not on the table of valid sales for the Subject Property's market area for the 2022 assessments.
30. The County Appraisers stated that the sale of the property to the north of the Subject Property occurred in February of 2022, which was after the assessment date of January 1, 2022. The County Appraisers stated that the improvements on that property were in fair condition, below that of the Subject Property and therefore not comparable, and that sale was determined to not be a valid sale (i.e., non-arm's length sale).
31. The Taxpayer offered no information to allow the Commission to determine the size of the property to the north, the number, quality or condition of the improvements, or the terms of the sale.
32. The Taxpayer has not demonstrated that the assessed value of the Subject Property should be reduced based on the sale of the property to the north of the Subject Property.
33. 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.
34. The Taxpayer has not 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 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	\$ 12,100
<u>Improvements</u>	<u>\$160,100</u>
Total	\$172,200

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 May 31, 2024.

Signed and Sealed: May 31, 2024



Steven A. Keetle, Commissioner