

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

JOHN P. HASCALL,  
APPELLANT,

CASE NO: 22R 0638

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 2321465128.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$903,900 for tax year 2022.
3. John P. Hascall (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 \$903,900 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 June 14, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John Hascall was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) was 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 3,277 square foot two story residence constructed in 2014. The Subject Property has a quality rating of very good and a condition rating of good.
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 Taxpayer alleged that the increase in assessed value from the prior assessment, particularly the value allocated to the land component as compared to other properties in the neighborhood, was unreasonable or arbitrary.
19. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> *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).

valuation.<sup>10</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>

20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
21. The Taxpayer presented the PRF for nine other properties in the same neighborhood as the Subject Property and requested an assessed value for the improvements based on the mean or average of the assessed value of the improvements on these properties and that the assessed value of the land component only increase by the mean or average amount of the increases of the assessed values of the land components on these properties.
22. A determination of actual value may be made by using professionally accepted mass appraisal methods.<sup>13</sup> The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.<sup>14</sup> The Taxpayer's opinion of value was determined by averaging assessed values, or change in assessed values, of other properties. The Taxpayer's method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
23. Additionally, averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.<sup>15</sup>
24. The Taxpayer alleged that the assessed value of the improvements on the Subject Property were not equalized with the improvements on other comparable properties.

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<sup>10</sup> *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).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

<sup>13</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>15</sup> See, e.g. Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>16</sup>
26. “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.”<sup>17</sup>
27. A review of the PRF of the Subject Property and the nine other properties presented shows that the differences in their assessments are due to characteristics, features, and add-ons of the properties such as age, square footage, garage size, basement finish, decks, patios, swimming pools, and pool houses, etc.
28. For example, the Subject Property is six to fourteen years newer than the rest of the properties presented and as the newest property has the least amount of physical depreciation applied.
29. The Taxpayer alleged that all ten of the properties presented are one- and one-half story properties but the Subject Property was misclassified as a two-story residence.
30. When determining the classification of a property as a one- and one-half or two-story residence an appraiser or assessor must not only consider square footage per floor, but fenestration, roof pitch or slope, and dormers, among other factors.<sup>18</sup>
31. Based on review of the information presented regarding each of the ten properties discussed the County’s classification of the properties, including the Subject Property, as one- and one-half or two-story properties meets generally accepted mass appraisal principles.

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<sup>16</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>17</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>18</sup> See, Marshall & Swift, *Residential Cost Handbook* (12/2022)

32. The Taxpayer has not shown that the assessed value of the improvements on the Subject Property were not equalized with the improvements on other comparable properties.
33. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with the assessed value of other comparable properties.
34. The Taxpayer alleged that the value of the land component of the Subject Property should be lower because it didn't have a lake-view as some of the other properties did.
35. The County Appraiser stated that as part of their land value analysis they found no difference in sales prices due to lake view versus non-lake view but that backing up to other residential properties or streets had a negative influence on value compared to properties in the area that backed up to green space or parks.
36. The land component of the Subject Property has the highest overall allocated assessed value of the ten properties presented, but it also has the largest lot size. When looking at the value of the land components on a per square foot basis the Subject Property has the lowest per square foot value of the properties without a negative influence such as backing up to a street or other residential property.
37. The Taxpayer has not shown that the assessed value of the land component of the Subject Property was not equalized with the assessed value of other comparable properties.
38. 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.
39. 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	\$267,600
<u>Improvements</u>	<u>\$636,300</u>
Total	\$903,900

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 July 3, 2024.

Signed and Sealed: July 3, 2024



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Steven A. Keetle, Commissioner