

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

KATE C. HEMMINGHAUS,  
APPELLANT,

CASE NO: 22R 0694

V.

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

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 1026330000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$409,200 for tax year 2022.
3. Kate C. Hemminghaus (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 \$409,200 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 June 14, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kate Hemminghaus 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 2,438 square foot two and one-half story residence constructed in 1919. 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 residential properties in the area, including the Subject Property.
19. The Sale of the Subject Property in November of 2021 is not included in the list of valid sales and the County Appraiser stated that it occurred after the cutoff date for use in the County Assessor's 2022 valuation analysis.
20. 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.

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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).

21. 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 valuation.<sup>10</sup>
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
23. The Taxpayer alleged that the Subject Property was being over assessed due to the garage in the back yard being inaccessible to cars.
24. The Taxpayer presented photographs of the interior and exterior of the structure in the back of the Subject Property and the area showing that it cannot be accessed from the street by a car.
25. The PRF indicates that the Subject Property does not have a garage and there is no value added to the 2022 assessed value calculation for a garage. The account notes and statements from the County Appraiser indicated that due to the lack of vehicle access the structure was treated as a storage shed and not valued.
26. The Taxpayer alleged that the condition rating of the Subject Property was incorrect.
27. The PRF shows that the Subject Property was remodeled in 2021.
28. The account notes in the PRF indicate that prior to the 2021 sale of the Subject Property the kitchen and bathrooms were updated per the sales listing.
29. The Taxpayer did not present any photographs of the interior of the Subject Property.
30. The Taxpayer has not demonstrated that the condition rating of good for the Subject Property was unreasonable or arbitrary.

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<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).

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

31. The Taxpayer alleged that the Subject Property did not have a finished basement.
32. The account notes in the PRF indicate that at the time of the 2021 sale of the Subject Property it had 600 square feet of basement finish per the sales listing.
33. At the hearing the Taxpayer indicated that there was basement finish in the Subject Property as of the assessment date but that there had been no remodeling or updating of the basement finish.
34. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
35. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
36. “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>13</sup>
37. The Taxpayer presented a list of properties that sold as well as properties on the same block as the Subject Property.
38. The Taxpayer did not present the PRF for the properties listed on the table of properties presented as equalization comparables. 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.<sup>14</sup>

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

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

<sup>14</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 1, 2023, includes the following:

39. The information that was provided did not include information such as the style (i.e., ranch, two story), type of construction (i.e., brick, siding), quality, condition, or age.
40. The Taxpayer stated that the property located at 5511 Harney Street was located across the Street from the Subject Property and was very similar to the Subject Property and should be valued at the same amount or \$299,300.
41. The property at 5511 Harney Street however has only 1,780 square feet of above ground living area while the Subject Property has 2,438 making the assessed value of the property at 5511 Harney Street \$168 per square foot while the Subject Property's assessed value would be \$167 per square foot.
42. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
43. 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.
44. 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.

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*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.*

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

Land	\$ 73,500
<u>Improvements</u>	<u>\$335,700</u>
Total	\$409,200

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 June 12, 2024

Signed and Sealed: June 12, 2024



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Steven A. Keetle, Commissioner