

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

JOHN A. RIGGLEMAN,  
APPELLANT,

CASE NO: 22R 0829

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 0607770000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$149,300 for tax year 2022.
3. John A. Riggleman (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 \$137,788 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 22, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John A. Riggleman was present at the hearing for the Taxpayer.
8. Scott Barnes and Michael Lunkwitz 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.<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 1,532 square foot two and one-half story residence constructed in 1908. The Subject Property has quality and condition ratings of average.
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 characteristics of residential properties in the area, including the Subject Property.
18. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2022.
19. The Taxpayer alleged that the land value was not equalized with other comparable properties.
20. The Taxpayer stated that he also owned the vacant lot located at 3517 Hamilton, which was separated from the Subject Property by another parcel. The Taxpayer stated that he was unable to combine the Subject Property and 3517 Hamilton into a single parcel because they were not contiguous.
21. The Taxpayer stated that the assessed value of 3517 Hamilton for tax year 2022 was \$3,000.

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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).

22. The County Appraisers stated that the assessed value of 3517 Hamilton was lowered by the County Board in prior assessment years and was not changed as part of the 2022 reassessment. The County Appraisers further stated that the assessed value of 3517 Hamilton should have been \$24,500 for tax year 2022.
23. The Commission finds that the equalized value of the land component of the Subject Property is \$3,000 for tax year 2022.
24. The Taxpayer alleged that the value of the improvement component of the Subject Property was not being equalized with improvement component of other comparable properties.
25. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>9</sup>
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
27. The Taxpayer presented the information from the County Assessors web site regarding eight parcels in the same neighborhood as the Subject Property.
28. The Taxpayer did not present the PRFs for the eight properties presented as 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 chart to the Subject Property.<sup>11</sup>

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<sup>9</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

<sup>10</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>11</sup> 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

29. The information that the Taxpayer did present from the County Assessors web site supports the position that the differences in valuation are due to differences in characteristics between the properties.
30. The Subject Property for example has a deck that adds value. The Subject Property also has a detached garage that adds value and that the other properties do not have, although one of the other properties has a carport.
31. The County Appraisers alleged that the value of the improvement component of the Subject Property was not equalized with the improvement component of other comparable properties after County Board action.
32. The County Appraisers compared the improvements on the Subject Property and the property at 3508 Lafayette alleging that the value of the improvements of the Subject Property should be set at their assessed value prior to County Board action to be equalized.
33. The County Appraisers discussed the similarities of these properties as well as the differences in base values, add on values (for items such as garages, decks, basements, etc.) and depreciation applied to the Subject Property and the property at 3508 Lafayette.
34. The County Board did not present the PRFs for the property located at 3508 Lafayette. Accordingly, the Commission cannot see the basis for the determination of assessed value for that property or compare the value added for its characteristics to the value added for the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the property located at 3508 Lafayette to the Subject Property.<sup>12</sup>

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*Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

<sup>12</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the County Board 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*

35. The Taxpayer has not demonstrated that the assessed value of the improvement component of the Subject Property was not equalized with the assessed value of the improvement component of other comparable properties.
36. The County Appraisers have not demonstrated that the assessed value of the improvement component of the Subject Property was not equalized with the assessed value of the improvement component of other comparable properties after County Board Action.
37. 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.
38. 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	\$ 3,000
<u>Improvements</u>	<u>\$113,588</u>
Total	\$116,588

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas

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*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.*

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 January 26, 2024.

Signed and Sealed: January 26, 2024



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Steven A. Keetle, Commissioner