

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

ANDREW T. VANSURKSUM,
APPELLANT,

CASE NO: 22R 0833

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 residential parcel in Douglas County, parcel number 2304352092.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$345,000 for tax year 2022.
3. Andrew T. Van Surksun (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 \$345,000 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 July 17, 2023, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Andrew Van Surksun 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 improved with a 2,290 square foot tri-level residence rated as average quality and good condition.
17. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value 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 properties in the Subject Property's market area were undervalued and all properties in the area were reassessed for tax year 2022.
20. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2022.
21. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior

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).

year's assessment is not relevant to the subsequent year's valuation.¹⁰

22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
23. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
24. The Taxpayer presented information from the County Assessor's web site regarding two properties in the same neighborhood as the Subject Property.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
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."¹³
27. The information presented by the Taxpayer regarding the two nearby properties indicates that they are two story homes while the Subject Property is a tri level, additionally the other two properties are older than the Subject Property, have lower condition ratings and do not indicate they have been remodeled recently and would therefore not be comparable to the Subject Property.
28. The Taxpayer did not present the PRFs for the properties that he alleged were comparable to the Subject Property. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by

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).

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

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

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

- the Taxpayer or compare their characteristics to the characteristics of the Subject Property.¹⁴
29. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with other comparable properties.
 30. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to the condition of the Subject Property as lower than good condition.
 31. The Taxpayer presented photographs of the exterior siding, interior water damage from roof leaks, and the retaining wall on the south and west sides of the Subject Property.
 32. The Taxpayer discussed issues with cracking siding, the condition of the roof and the retaining wall on the south and west sides of the Subject Property.
 33. The Taxpayer presented an estimate for the replacement of the retaining wall on the south and west sides of the Subject Property.
 34. The County Board presented the 2018 real estate sale listing of the Subject Property which includes photographs of the interior and exterior of the Subject Property.
 35. The County Appraisers stated that after reviewing the photographs and other information presented at the hearing, they felt the condition determination of good accurately reflected the condition of the Subject Property.
 36. The Taxpayer stated that the elevation of the Subject Property was higher than the properties to the south and west and that there is a retaining wall on the south and west sides of the lot that are part of the Subject Property.

¹⁴ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 7, 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.*

37. The Taxpayer stated that prior to the assessment date but after the 2018 purchase of the Subject property the retaining wall in the southwest had collapsed.
38. The Taxpayer stated that he was unaware of the issues with the retaining wall when he purchased the Subject Property.
39. The Taxpayer stated that the estimate for repairs presented was the lowest of the only two estimates he was able to obtain for the retaining wall. The Taxpayer stated that he only obtained estimates for replacement of the retaining wall as no contractor would bid to repair the existing retaining wall.
40. The Taxpayer stated that the swimming pool was usable as of the assessment date but that the retaining wall was installed at the time of the pool installation and was an integral part of the swimming pool.
41. The Taxpayer alleged that the condition of the retaining wall and cost of necessary repairs to the retaining wall impacted the value of the swimming pool on the Subject Property.
42. The Commission finds that the condition of the retaining wall impacts the value of the swimming pool and is not consistent with a swimming pool of good condition.
43. Based on the information before it the Commission finds that in order to reflect the value of the Subject Property in good condition, including the swimming pool, the depreciated cost of the repairs to the retaining wall of \$30,300 should be deducted from the value of the Subject Property.¹⁵
44. The Commission finds that the value of the Subject Property is \$314,700, with an improvement value of \$288,000 and a land value of \$26,700.
45. 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.

¹⁵ \$35,000 - \$8,977.05 (25.65% Depreciation) = \$26,022.50 x 1.1625 NBHD adjustment = \$30,300 (Rounded)

46. 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	\$ 26,700
<u>Improvements</u>	<u>\$288,000</u>
Total	\$314,700

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 28, 2023.

Signed and Sealed: July 28, 2023



Steven A. Keetle, Commissioner