

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

JEFFREY S. HIGGINS,  
APPELLANT,

CASE NO: 22R 0849

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 unimproved residential parcel in Douglas County, parcel number 1427700002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$17,300 for tax year 2022.
3. Jeffrey S. Higgins (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 \$10,000 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 June 14, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Jeff Higgins 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 an unimproved residential parcel.
17. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
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 residential properties in the area, including the Subject Property.
19. The Taxpayer presented 2023 information from the Assessor's web site regarding the properties to the north and south of the Subject Property as well as two properties located on nearby 62<sup>nd</sup> street.
20. The Taxpayer argued that the Subject Property was comparable to these properties and that the Subject Property was valued as a non-buildable lot for tax year 2023, and that the subject property should be valued the same as these lots for tax year 2022.
21. The County Appraiser discussed the Subject Property and the parcels presented by the Taxpayer as comparables. The County Appraiser stated that the Subject Property and the properties

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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).

adjacent to the Subject Property on the north and south were buildable lots but that they had negative access issues. Three of the other properties were non-buildable lots due to their topography and one was significantly smaller limiting its use. The County Appraiser stated that of the properties presented, only the properties adjacent to the Subject Property to the north and south were comparable to the Subject Property.

22. The Commission finds that of the properties presented only the properties adjacent to the Subject Property to the north and south are comparable to the Subject Property.
23. The County Appraiser stated that the adjustment for a non-buildable lot was incorrectly applied to the Subject Property and the adjacent property directly to the north for tax year 2023 (which is not before the Commission) and that it should have been classified as a lot with negative access issues, not as a non-buildable lot.
24. The PRF for the Subject Property shows that a land revaluation was done for the Subject Property's market area for tax year 2022 and 2023.
25. The Taxpayer did not provide the PRF for the properties presented as comparable or other information regarding land valuations in the area to allow the Commission to determine the value of land component of the Subject Property using the County's valuation model with the correct negative access adjustment applied.
26. However, adjacent property to the north has the same negative access issue, is the same size, and is valued at \$10,000 as is the Subject Property while the adjacent property to the south of the Subject Property, which has the same negative access issues but is slightly larger, is valued at \$7,000 for tax year 2022.
27. The equalized value of the Subject Property should be no more than the assessed value of the adjacent property to the south.

28. Based on the information provided the Commission finds that the equalized assessed value of the Subject Property for tax year 2022 is \$7,000.
29. 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.
30. 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:

<u>Land</u>	<u>\$7,000</u>
Total	\$7,000

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 24, 2024.

Signed and Sealed: May 24, 2024



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Steven A. Keetle, Commissioner