

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

REBECCA R. OCHSNER,
APPELLANT,

CASE NO: 22R 0908

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 1635460000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$503,400 for tax year 2022.
3. Rebecca R. Ochsner (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 \$503,400 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 October 19, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Rebecca R. Ochsner and Jonathan Ochsner were 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 1.¹
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 a residential parcel improved with a 2,443 square foot ranch style residence constructed in 1953. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the increase in the assessed 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 residential properties in the area, including the Subject Property.
19. The PRF for the Subject Property indicates that the market area in which the Subject Property is located was reappraised for tax year 2022.
20. 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

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
22. The Taxpayer presented a list of recent sales of ranch style properties in the Subject Property's market area.
23. All but two of the Taxpayer's sales were also on the list of recent sales of ranch style properties in the Subject Property's market area presented by the County Board which contained two sales not presented by the Taxpayer.
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
25. The Taxpayer did not present the PRFs for the 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.¹³
26. The County Appraiser stated that the recent sales of the same style, quality, and condition as the Subject Property were on the lists presented by the Taxpayer and the County Board and that these sales indicted a median assessed value of \$246 per square

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

foot while the Subject Property was assessed at \$206 per square foot.

27. The Taxpayer alleged that the assessed value of the Subject Property did not account for external factors such as the traffic on the street in front of the Subject Property or the re-development occurring to the west of the Subject Property
28. The County Appraiser stated that the Subject Property received a 20% discount factor to the land component due to the amount of traffic on the street in front of the Subject Property.
29. The County Appraiser discussed the re-development occurring next to the Subject Property and indicated that due to differences in the characteristics of the properties in the redevelopment it was part of a different market area with higher assessed values than the Subject Property's market area.
30. The Taxpayer offered no other information to allow the Commission to quantify the impact of construction work being done in the re-development on the assessed value of the Subject Property.
31. 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.
32. 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	\$120,000
<u>Improvements</u>	<u>\$383,400</u>
Total	\$503,400

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 October 16, 2024.

Signed and Sealed: October 16, 2024



Steven A. Keetle, Commissioner