

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

MARY CONWAY
APPELLANT,

CASE NO: 23R 0411

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 0805780056.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$706,400 for tax year 2023.
3. Mary Conway (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 \$706,400 for tax year 2023.
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 27, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. John and Mary Conway were present at the hearing for the Taxpayer.
8. Cindy Stovie (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 one-story, single family home built in 2010 with 2,389 square feet (SF) above grade, basement area of 2,365 SF with 1,400 SF of finish, 2.5 baths, a quality rating of very good, and a condition rating of good.
17. The Taxpayers stated that the increase in value is unreasonable and is not equalized with the surrounding properties.
18. The Taxpayers stated that the Subject Property value has risen 91% over the past four years and an adjustment of this magnitude is not justified.
19. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
20. The Taxpayers submitted the "Summary Form for 2023" which stated that the Referee issued a recommendation of \$585,000 to the County Board based on the Taxpayer's evidence and therefore, should be the basis for the 2023 assessment.
21. The Coordinator Recommendation from the Summary Form for 2023 states that the comparable properties submitted by the

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).

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).

Taxpayers for analysis were inferior to the Subject Property and therefore, recommended no change in value and subsequently, the County Board decision was no change to value.

22. The Taxpayers submitted Property Record Files (PRF) for the properties submitted to the County for the initial protest for analysis.
23. The PRFs for the Eagle Run Dr. properties confirmed that the Assessor's office has classified the Subject Property as a higher quality.
24. According to professionally accepted mass appraisal practices, if a comparable property is inferior in some respect, a sale price is adjusted upward, just as if it is superior, it will be adjusted downward.¹¹ Using properties for comparison without regard to the quality or adjustment for the difference in the quality is not an appropriate practice.
25. The Taxpayers stated that the price per square foot (PPSF) of surrounding properties in Champions Run was lower than the Subject Property, therefore making the Subject Property valuation arbitrary or unreasonable.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (style, size, finish, condition, etc.), and location.
27. Differences in components per property will cause differences in valuation based on a cost approach analysis.
28. The Taxpayers opined that properties in Eagle Run West are of the same quality, if not better, than the Subject Property due to location, amenities, and updates to the interiors.
29. The Taxpayers did not submit information to quantify an adjustment to the quality of the Eagle Run West properties for analysis.
30. The Appraiser stated that the Eagle Run West properties were of inferior quality to the Subject Property due to the

¹¹ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

construction and style as Villa homes, older age, and other market influences different from the Champion's View properties. The Eagle Run West properties discussed are classified as a good quality.

31. The Appraiser stated that properties located at Eagle Run West that have updated their interior will be reflected in the condition adjustment to account for the updates and are not quantified by an adjustment to the quality rating of the structure.
32. The Appraiser attested that the Eagle Run properties have enough influence and sales to drive their own market area separate from the Subject Property neighborhood and are not used in the Subject Property neighborhood analysis.
33. The Appraiser attested that there was a revaluation conducted to the Subject Property neighborhood for 2023. As such, the result will be varying degrees of percentage increases (or decreases) to each property in the market study area dependent upon the property components and comparable sales within their study period.
34. The Appraiser submitted an aerial document of the Subject Property's street with quality/condition/PPSF breakdowns of neighboring properties, along with their corresponding PRFs for analysis.
35. As a result, the Subject Property PPSF appears to be in line with the like neighboring properties, showing that valuations are uniformly and proportionately applied based on contributory value of individual property components.
36. 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.
37. 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 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$100,000
<u>Improvements</u>	<u>\$606,400</u>
Total	\$706,400

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 2023.
7. This Decision and Order is effective on July 24, 2024.

Signed and Sealed: July 24, 2024



Jackie S. Russell, Commissioner