

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

ZYGMUNT E. ORLOWSKI
APPELLANT,

CASE NO: 23R 0467

V.

STANTON COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE STANTON COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Stanton County, parcel number 0001999.00.
2. The Stanton County Assessor (the County Assessor) assessed the Subject Property at \$426,470 for tax year 2023.
3. Zygmunt E. Orłowski (the Taxpayer) protested this value to the Stanton County Board of Equalization (the County Board) and requested an assessed value of \$389,947 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$426,470 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 26, 2024, at Divots Conference Center, 4200 W Norfolk Ave, Norfolk, NE, before Commissioner Jackie S. Russell.
7. Zygmunt Orłowski was present at the hearing for the Taxpayer.
8. Amber Happold (Assessor) and Leslie Hasenkamp 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 a 1½ story, single family residential home built in 1994 with 2,696 square feet (SF) above grade, 1,266 SF basement area with 121 SF minimal finish, 14 plumbing fixtures, an attached garage with 663 SF, quality rating of average (3) and a condition rating of fair plus (2.5).
17. The County Assessor present for the hearing was appointed to office in January of 2024 with no previous discussions with the Taxpayer.
18. The Taxpayer stated the Subject Property percentage increase of 14% is unreasonable when his conducted study showed a spread of 5-11% within Stanton County.
19. The Taxpayer verbally listed property addresses used in the analysis but did not present Property Record Files (PRF) for the Commission to analyze component data.
20. The Taxpayer opined that no comparable properties to the Subject have sold for analysis.
21. The Taxpayer called the Madison County and Wayne County Assessors for their average value increase to their residential markets which was stated as approximately 8% each. The Taxpayer stated Lincoln and Omaha had an 11% average increase, the state of Nebraska saw a 3% average increase. It was stated that Stanton County saw a 4.13% average increase.

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).

22. The Taxpayer did not provide any documentation to support the determination of the average increases in the counties mentioned.
23. The Taxpayer stated that the condition of the Subject Property is subjective and that none, or not enough, depreciation exists on certain components of the property.
24. The Taxpayer did not provide information to demonstrate a difference in the current condition rating and his opinion of condition for the Commission to analyze.
25. The Taxpayer stated that an acceptable value for the Subject Property would be the alleged average Stanton County increase of 4.13% added to the 2022 valuation.
26. The Assessor provided the PRF for the Subject Property as a basis of value and attested that the previous Assessor left documentation explaining the 2023 valuation methodology as a revaluation of the Subject Property's rural residential neighborhood, which included updating costing tables to 2022 and depreciation tables to 2019. 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 sales within the study period.⁹
27. The Taxpayer stated that the PRF data for the Subject Property appeared to be correct and multiple conversations about the property took place with the previous Assessor.
28. The PRF indicates a Replacement Cost New Less Depreciation (RCNLD) for all structures listed, indicating that depreciation does exist in the valuation formula.
29. 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.
30. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

⁹ 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

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	\$ 62,065
<u>Improvements</u>	<u>\$364,405</u>
Total	\$426,470
3. This Decision and Order, if no further action is taken, shall be certified to the Stanton County Treasurer and the Stanton 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 18, 2024.

Signed and Sealed: July 18, 2024



Jackie S. Russell, Commissioner