

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

THOMAS BOWLEY
APPELLANT,

CASE NO: 23R 0489

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 1216940209.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$362,800 for tax year 2023.
3. Thomas Bowley (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 \$313,800 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 September 23, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Thomas Bowley was present at the hearing for the Taxpayer.
8. Tim Tran (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 split entry, single-family home built in 1998 with 1,438 square feet (SF) above grade, walkout basement area of 1,516 SF with 1,350 SF full finish, one fireplace, 2.50 baths, quality rating of average, and condition rating of average. The property also features a detached garage with 825 SF.
17. The Taxpayer stated that the Subject Property is not equalized with other properties in the neighborhood and therefore, the valuation increase is arbitrary or unreasonable.
18. The Taxpayer provided a written document with six properties listed, a few data specifics for each, and the valuation increases from 2022 to 2023 for each.
19. The Taxpayer did not provide the Property Record File (PRF) for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property.⁹

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 9, 2024, 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.*

20. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰
21. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.¹¹
22. "Uniform and accurate valuation of property requires correct, complete, and up-to-date property data."¹²
23. In order to determine actual or fair market value, an accurate description of the following characteristics is critical: quality of construction, style, age, size, amenities, functional utility, and condition.¹³

¹⁰ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013); *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 577, 471 N.W.2d 734, 742 (1991).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹² International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 3.1 (July 2017).

¹³ International Association of Assessing Officers, *Property Assessment Valuation* 204-05 (3rd ed. 2010).

24. The Taxpayer has not presented information to demonstrate that the properties listed are comparable to the Subject Property, or if not, that they have been adjusted according to generally accepted mass appraisal methods to become more like the Subject Property.
25. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).
26. When a comparable property differs from the Subject Property, an 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." Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).
27. The Appraiser stated that the property located at 21009 Greenbrier Dr, which appears on the Taxpayer's document to be the closest to the Subject Property in comparability, was lowered by the County Board through the protest process for 2023. Therefore, the Appraiser could not speak to the valuation change shown but did attest that prior to the adjustment there was approximately \$70,000 in difference to the Subject Property due to the Subject Property detached garage vs. an attached garage at the comparable property, and a large difference in the amount of basement finish.
28. The Appraiser stated that based on the referee recommendation, the County Board lowered the property value from \$362,800 to \$313,800 most likely due to lot buildability issues, not as a reflection of the improvement data.
29. The Appraiser stated 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.

30. 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.
31. 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	\$ 44,200
<u>Improvements</u>	<u>\$269,600</u>
Total	\$313,800

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 October 7, 2024.

Signed and Sealed: October 7, 2024



Jackie S. Russell, Commissioner