

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

GREGORY J. CHEREK,
APPELLANT,

CASE NO: 23R 0620

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 0702320000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$258,300 for tax year 2023.
3. Gregory J. Cherek (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 \$258,300 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 February 6, 2024, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Greg Cherek was present at the hearing for the Taxpayer.
8. James G. Morris, with the Douglas 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 the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.³
12. The first involves a presumption 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.⁴ 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.⁵
13. The second burden of proof requires that 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.⁶
14. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the

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 *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, ___ N.W.3d ___ (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

⁴ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___ (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

⁵ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

⁶ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

order, decision, determination, or action was unreasonable or arbitrary.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹⁰
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Subject Property is a residential parcel improved with a 1,768 square foot 2 and one-half story unfinished residence constructed in 1910. The Subject Property has a quality of construction rating of average and a condition rating of good.
18. The Taxpayer alleged that the increase in the assessed value of the Subject Property, particularly in relation to other properties, from the prior assessment was unreasonable or arbitrary.
19. The assessed value for real property may be different from year to year according to the circumstances.¹² For this reason, a prior year's assessment is not relevant to the subsequent year's

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁹ Cf. *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).

¹⁰ *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹² *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).

valuation.¹³ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹⁴

20. The Taxpayer alleged that the assessed value of the Subject Property should be lower based on its condition, relative to the other properties in the area.
21. The County Appraiser stated that the County Assessor's office utilizes information from inspections as well as listing information from the multiple listing service to determine condition ratings for properties in the county.
22. 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.
23. The Taxpayer did not present information to show that the County Assessor condition rating of good for the Subject Property was unreasonable or arbitrary.
24. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
25. The Taxpayer presented information from the assessor's website for four properties located in the same neighborhood as the Subject Property. The information for one of the properties is for tax year 2023, the information for the other three properties is for tax year 2024.
26. The Taxpayer did not present the PRF 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.

¹³ *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).

¹⁴ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

The Commission is unable to determine the contribution of the different characteristics of the properties presented by the Taxpayer to the Subject Property.¹⁵

27. The PRF for the Subject Property shows that there was a reappraisal for the Subject Property's neighborhood in 2022 as well as a land value review in 2023, and that the improvement value for tax year 2023 is not based on the County Appraiser's 2023 valuation model but rather on the 2022 value as adjusted by the County Board.
28. The information that was provided by the Taxpayer shows that all of the properties presented as comparables have the same quality of construction rating but lower condition ratings than the Subject Property. While they are all two and one-half stories, three of the properties have finished living space in the half story while the Subject Property does not. There are also differences in the type of construction varying from stucco to brick and vinyl siding versus aluminum, as well as differences in the porches and garages.
29. The information provided by the Taxpayer does not show the basis of the assessments of the land or improvement components of properties presented that would allow the Commission to determine if their assessed values were uniform and proportionate.
30. The Taxpayer has not shown that the assessed value of the Subject Property was not equalized with other comparable properties.
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.

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 4, 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.*

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 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 23,300
<u>Improvements</u>	<u>\$235,000</u>
Total	\$258,300

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.
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 December 16, 2025.

Signed and Sealed: December 16, 2025



Steven A. Keetle, Commissioner