

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

PAMELA J. REICKS,  
APPELLANT,

CASE NO: 23R 0779

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 townhouse in Douglas County, parcel number 2532189047.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$394,100 for tax year 2023.
3. Pamela J. Reicks (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 \$394,100 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 10, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Pamela J. Reicks was present at the hearing for the Taxpayer.
8. Lisa Humlicek (the 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer stated there are issues near the Subject Property that limit value and enjoyment. Items include a concrete garbage chute for a nearby strip mall. The Taxpayer stated there is no barrier between the garbage chute and the Taxpayers backyard fence. There is a nearby retail store with lots of people coming and going all day and evening. A nearby automotive shop that does brake repair has air tool noise during the day that is disruptive, and the strip mall attracts young adults that gather late at night can be loud and the bright lights from the strip mall illuminate the Subject Property which is bothersome.
17. The Taxpayer provided eleven sales from the subdivision to show the inequity in price per square foot (PSF) of the recently sold properties to the Subject Property. The Taxpayer figured the Subject Property was valued at \$242 PSF whereas the recent sales showed an average PSF value of \$158 (sales price per square foot) and \$134 (assessed price per square foot). The Taxpayer dropped the highest and lowest sales to narrow the range and arrived at a PSF value of \$126 (sales price) and \$104 (assessment).
18. The Appraiser stated most of the Taxpayers comparable sales are two-story homes, not a ranch style like the Subject Property

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

and did not consider them to be comparable. The Appraiser stated the Taxpayers comparable sales were of inferior quality and condition and would not be considered comparable. The Taxpayers comparable sales are newer sales and not in the sales file for the appraiser to use. The Appraiser stated sales in the area support the current valuation and would recommend no change in value.

19. The Taxpayer offered no information to quantify the impact of the nearby commercial properties on the value of the Subject Property.
20. Taxpayer's requested valuation for the Subject Property is based on the average valuation of the properties presented as discussed in paragraph 17 above.
21. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."<sup>9</sup>
22. Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.
23. "A sales comparison 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."<sup>10</sup>
24. After analyzing the sales comparables provided by the Taxpayer, none were of the same quality and condition as the Subject Property. All eleven of the comparables sold for more than they were being assessed which could be evidence that the current assessments in the neighborhood could be low. Two of the eleven comparables were within four years of the age of the Subject

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<sup>9</sup> Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

<sup>10</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

Property, all the others were ten or more years older than the Subject Property, nearly half of the comparable sales had no basement finish, which the Subject Property has 982 square foot of basement finish.

25. No adjustments were made to the sales presented by the Taxpayer for differences in age, size, quality, condition, etc.
26. 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.
27. 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	\$ 40,900
<u>Improvements</u>	<u>\$353,200</u>
Total	\$394,100
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 January 22, 2025.

Signed and Sealed: January 22, 2025



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James D. Kuhn, Commissioner