

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

JOHN K. KADEY  
APPELLANT,

CASE NO: 23R 1099

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 1643040002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$286,000 for tax year 2023.
3. John K. Kadey (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 \$286,000 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 July 23, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. John Kadey was present at the hearing for the Taxpayer.
8. James Morris (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 Subject Property is a 2.5 story, single family residential home built in 1920 with 3,534 square feet (SF) above grade, basement area of 1,396 SF with no finish, 3 bathrooms, with a quality rating of good, and a condition rating of worn out.
17. The Taxpayer stated that the increase in property value is arbitrary due to the condition of the home.
18. The Taxpayer stated that the Subject Property is in need of three HVAC systems with an approximate cost of \$80,000 to cure the current HVAC inadequacies of the property, and opined this would decrease the value of the home from a buyer's perspective.
19. The Taxpayer stated that there are several ongoing renovation projects throughout the Subject Property that would lower the value of the home.
20. The Appraiser attested that the current condition rating of "worn out" is the lowest rating available for use to the Assessor's Office and reflects the ongoing deferred maintenance of the Subject Property.
21. The Taxpayer provided a document with a price per acre (PPAC) land comparison analysis to the Subject Property, as well as price per square foot (PPSF) improvement comparison analysis.

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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).

22. The Taxpayer also provided a separate document with additional PPAC land comparison analysis.
23. The Taxpayer provided Property Record Files (PRF) for all the comparable properties used in both land analyses for the Commission to review.
24. PRFs were not submitted of the three parcels included in the Taxpayer's improvement value analysis for the Commission to review.
25. Without the PRFs for the improvement value comparable properties for review by the Commission, it is inconclusive whether the properties submitted are comparable and appropriate adjustments were made to the comparable properties before a PPSF analysis was made<sup>9</sup>.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (style, size, finish, condition, etc.), and location.<sup>10</sup>
27. "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." Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).
28. The Taxpayer stated that based on the PPAC analysis, the Subject Property land value is overvalued.
29. The Appraiser attested that land valuations are developed using Multiple Regression Analysis (MRA) by neighborhood and

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<sup>9</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 31, 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.*

<sup>10</sup> See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

accounts for economies of scale which states generally, as size increases, unit prices decrease.<sup>11</sup>

30. Analysis of the PRFs for the land value component supports that the land valuations within the same “LEA” as indicated on the PRFs with comparable size support uniform land values and economies of scale.
31. 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.
32. The Appraiser submitted a document titled “All Valid Sales for Subject’s Neighborhood” which shows a correlation between sold properties and the Subject Property based on components of comparison and professionally acceptable mass appraisal practices.
33. 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.
34. 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:

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<sup>11</sup> Appraisal Institute, *The Appraisal of Real Estate* at 198 (14th ed. 2013) Current = 15th ed. 2020 at page 172-73.

Land	\$ 55,700
<u>Improvements</u>	<u>\$230,300</u>
Total	\$286,000

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 August 8, 2024.

Signed and Sealed: August 8, 2024




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Jackie S. Russell, Commissioner