

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

MARY H. OVERMAN TRUST
APPELLANT,

CASE NO: 23R 1382

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 parcel in Douglas County, parcel number 0919720581.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$496,300 for tax year 2023.
3. Mary H. Overman Trust (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 \$496,300 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 June 10, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Craig E. Overman 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 1.¹
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 Taxpayer provided comparable properties showing assessment values, recent sales and current listings and have broken each down into a price per square foot (PPSF) analysis.
17. The Taxpayer stated they overpaid for the Subject Property out of necessity when they purchased it in September of 2021 for \$552,500.
18. The Appraiser stated the sales comparables provided by the Taxpayer are out of the County's two-year sales file and were not used for valuation purposes. The Appraiser stated the Subject Property is being valued at a lower PPSF than some of the comparables provided by the Taxpayer. The Appraiser stated the Subject Property has a large lot and has a large amount of square footage as compared to some of the comparable properties provided by the Taxpayer.
19. The Commission analyzed all the information provided by the Taxpayer however, no Property Record Files (PRF) were provided. Without any PRF of the comparables, the Commission is unable to analyze the comparability of the comparables to the Subject Property. Each property will have different components that attribute to value, thusly making a difference in value between similar homes. The Commission's May 8, 2024, Order for Single Commissioner Hearing stated, "Copies of the county's

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).

PRF for any parcel you will present as a comparable parcel should be provided so that your claim can be properly analyzed”.

20. 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.
21. 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	\$ 70,300
<u>Improvements</u>	<u>\$ 426,000</u>
Total	\$ 496,300

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 (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 December 17, 2024.

Signed and Sealed: December 17, 2024



James D. Kuhn, Commissioner