

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

MICHAEL POPELIER  
APPELLANT,

CASE NO: 23R 1402

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 2531221760.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$320,100 for tax year 2023.
3. Michael Popelier (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 \$320,100 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 August 7, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Michael Popelier was present at the hearing for the Taxpayer.
8. Kurt Skradis (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 two-story, single-family home built in 2001 with 2,406 square feet (SF) above grade, walkout basement area of 1,097 SF with no finish, 2.50 baths, built-in garage with 775 SF, a quality rating of good, and a condition rating of average.
17. The Taxpayer stated that the valuation is arbitrary or unreasonable due to the condition of the property.
18. The Taxpayer submitted a list of the Subject property's deferred maintenance issues and their potential cost to cure based on personal estimations. The list was accompanied by several close-up photographs.
19. The Taxpayer's photographs show deferred maintenance issues with the concrete driveway, peeling paint on the porch and exposed foundation brick, exterior wood window frame rot, the A/C unit, interior ceiling leak in the garage, carpet tread on interior staircase, and the original kitchen.
20. The Appraiser opined that based on the Taxpayer's documents and testimony, there may be a need to adjust the condition of the property to fair.
21. The Appraiser stated that there was a revaluation conducted on the Subject property neighborhood, but there was not a physical inspection done to the Subject property for 2023.

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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 results of a revaluation 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.
23. The Appraiser submitted the Property Record File for the Subject property with values for the contributory components of the property, however, there is not a direct contributory value to the condition of the property, nor could one be derived from all evidence submitted.
24. Based on the Appraiser's submitted "All Valid Sales for Subject's Neighborhood" document, the average assessed value per square foot of only the average condition properties is \$151.65. While the median assessed value per square foot of the average condition properties is \$144.88. The range of values per square foot is \$140.10 to \$192.00.
25. Ignoring the 1,701 SF property which appears to be an outlier with a \$192 value per square foot, the average becomes \$147.61, the median \$144.85, and the range \$140.10 to \$158.80.
26. Based on the 2023 value of the Subject property, the current value per square foot is \$133.04, showing that the Subject Property is falling lower than the current sales data on average condition rated properties by at least \$16,980<sup>9</sup>.
27. With no evidence supporting a conditional adjustment contributory value, and the value per square foot of the Subject property being below the current market sales submitted for review, the Commission finds the current value of the Subject property to be supported.
28. 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.

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<sup>9</sup> Lowest sales value per square foot with average condition = \$140.10 x 2,406 SF of Subject property = \$337,080  
\$337,080 - \$320,100 Subject property current value = \$16,980.

29. 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 38,200
<u>Improvements</u>	<u>\$281,900</u>
Total	\$320,100

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 September 17, 2024.

Signed and Sealed: September 17, 2024



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Jackie S. Russell, Commissioner