

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

JAMES B MAUCH
APPELLANT,

CASE NO: 23R 1619

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 0611370174.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,219,100 for tax year 2023.
3. James B Mauch (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 \$1,209,100 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 November 22, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. James B. Mauch was present at the hearing for the Taxpayer.
8. Lisa Humlicek (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 Subject Property is a 1.5 story, single-family home built in 2006 with 3,725 square feet (SF) above grade, walkout basement area of 3,184 SF with 128 SF full finish, two full baths, two half baths, one fireplace, detached garage area of 615 SF, quality rating of very good, and condition rating of good.
17. The Taxpayer stated that the Subject Property increase of 37% is arbitrary and unreasonable within one year.
18. The Taxpayer stated that the Subject Property is in need of updates, there is foundational cracking, and interior water damage. After discussions with the Appraiser, the Taxpayer agreed that the discussed deferred maintenance is typical for the age of the property.
19. 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. The amount of increase is a reflection of the local market of comparable sales and does not have a limit to the level of increase or decrease that could be associated with the value from year to year.

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).

20. The Appraiser stated that due to the deferred maintenance that was verbally discussed with the owner prior to the hearing, a new opinion of value was reached through changing the condition rating from good to average of \$1,189,400.
21. The Appraiser stated that the Subject Property value was derived from a sales comparison approach based on sales within the required sales study period of 10/1/2020 through 9/30/2022.⁹ All Valid Sales for the Subject's Neighborhood were included within the Property Record File submitted for analysis to show support of the Subject Property value.
22. All real property, other than agricultural land and horticultural land, is valued at 100% of its actual value.¹⁰
23. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.
24. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

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.

⁹ 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

¹⁰ 350 Neb. Admin. Code, ch. 10 § 003.01A (10/26/2014).

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

Land	\$ 166,500
<u>Improvements</u>	<u>\$1,022,900</u>
Total	\$1,189,400

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



Jackie S. Russell, Commissioner