

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

MADHU JOSHI
APPELLANT,

CASE NO: 23R 1688

V.

DECISION AND ORDER
REVERSING 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 0842540000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$162,400 for tax year 2023.
3. Madhu Joshi (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 \$162,400 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 May 17, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Madhu Joshi was present at the hearing for the Taxpayer.
8. Tim Tran (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 stated major repairs are needed to bring the Subject Property to its current assessed value. The Taxpayer stated the Subject Property suffers from major foundation and structural issues. The Taxpayer stated some masonry work would be needed as well. Two foundation repair estimates were provided, one from Thrasher Basement Systems showing \$26,000 for repair and one from Grip-Tite Foundation Systems showing \$23,040, however these estimates were from 2009.
17. The Taxpayer provided photos of some of the foundation issues. Some of the photos showed large cracks in the foundation where it appears the home has settled and shifted on the foundation. The Taxpayer stated the Subject Property would have to be sold "as is" as she isn't planning on making the repairs necessary.
18. The Taxpayer stated the Subject Property is only a two bed, one bath home and not as desirable to potential buyers as homes with more bedrooms and bathrooms. The Taxpayer asserted the traffic count on the Subject Property's street is one of the highest in Omaha and would not be as desirable to potential buyers who are looking for a quieter neighborhood.
19. The Appraiser stated the Subject Property has been reviewed numerous times and adjustments have been made to reflect all the issues the Taxpayer has stated. The Appraiser lowered the

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).

Condition from Average to Poor. A previous Appraiser had raised the Condition from Poor to Average after an exterior review but was corrected for the 2023 assessment.

20. The Appraiser stated sales in the Subject Property's neighborhood have been increasing resulting in the increase in valuations. The Appraiser stated the County Board of Equalization lowered a neighboring properties land value to \$30,000. The Appraiser stated the land value of the Subject Property should be lowered to \$30,000 to equalize the Subject Property with the neighboring property.
21. The Subject Property has a condition rating of Poor. A condition rating of poor is defined in the Marshall & Swift Residential Cost Handbook as – "Poor Condition (Worn Out) – Repair and overhaul needed on painted surfaces, roofing, plumbing, heating, numerous functional inadequacies, substandard utilities etc. (found only in extraordinary circumstances). Excessive deferred maintenance and abuse, limited value-in-use, approaching abandonment or major reconstruction, reuse or change in occupancy is imminent. Effective age is near the end of the scale regardless of the actual chronological age".
22. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
23. The Taxpayer has 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 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.

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

Land	\$ 30,000
<u>Improvements</u>	<u>\$123,200</u>
Total	\$153,200

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 22, 2024.

Signed and Sealed: August 22, 2024



James D. Kuhn, Commissioner