

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

ALLAN M. ZIEBARTH
APPELLANT,

CASE NO: 19C 0505

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 commercial parcel in Douglas County, parcel number 1523000003.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$58,100 for tax year 2019.
3. Allan M. Ziebarth (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 \$58,100 for tax year 2019.
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 6, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Alan M. Ziebarth was present at the hearing.
8. Jennifer Clark, Deputy Douglas County Attorney and Keith Nielsen with the County Assessor's Office (the County Appraiser) were 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 alleges that the Subject Property was purchased in 2018 for \$33,000 and that should be its value for tax year 2019
17. The County Board presented the Property Record File (PRF) for the Subject Property which lists the last sale of the Subject Property as a 2003 sale for \$33,000.
18. The account notes in the PRF state that the 2018 sale discussed by the Taxpayer was determined to not be a valid sale as it was a fulfillment of a contract to purchase the Subject Property written in 2003.
19. The County Appraiser stated that the 2003 purchase contract did not reflect the current market.
20. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."⁹ "Pursuant to § 77-112, 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).

⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁰

21. The County Board presented a table of the recent sales of retail stores in the County.
22. The County Board presented the PRF for five recent sales of commercial parcels to support the County Appraisers allegation that the 2018 sale did not reflect market value.
23. The five PRFs presented are for properties that have the similar characteristics as the Subject Property and are all being assessed as retail stores.¹¹
24. The County Appraiser and Taxpayer discussed the other properties whose PRFs were presented by the County Board and their similarities and differences from the Subject Property.
25. The PRFs show that differences in their assessments are due to differences in their characteristics.
26. The Taxpayer alleged that the Subject Property is not used as a retail store and should not be classified as a retail store.
27. Professionally accepted appraisal methodology holds that “Whenever a market value opinion is developed, highest and best use analysis is necessary.”¹²
28. The Taxpayer stated that the Subject Property is used for storage and that in 2019 it had a tenant that used the property for the repair and storage of musical instruments.
29. The Taxpayer stated that the lack of parking or rear access to the property limits its value as a retail location.
30. The PRF indicates that the Subject Property was built in 1900 as a retail store and had been used as a restaurant in the past.
31. The County Appraiser stated that while there is not parking directly in front of the Subject Property there is parking on the block on which the Subject Property is located. The County

¹⁰ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹¹ The Commission notes that one of these five properties was converted to a residential use after the sale but that at the time of assessment it was classified as a retail store.

¹² Appraisal Institute, *The Appraisal of Real Estate* 34 (15th ed. 2020).

Appraiser further stated that access to the rear of the property is only available from the improvements or by crossing the adjacent property, which is also owned by the Taxpayer.

32. The County Appraiser stated that the County Assessor values properties based on their characteristics and while the Subject Property is not being used for retail purposes it was built as a retail store and that would be its highest and best use and therefore that was its proper classification for valuation purposes.
33. The Commission finds that the highest and best use of the Subject Property would be as a retail store.
34. The County Appraiser acknowledged the quality and condition of the Subject Property were only fair and stated that it is being valued using the lowest category for an actively used property.
35. The Taxpayer did not present information to allow the Commission to quantify the impact, if any, the parking or rear access would have on the value of the Subject Property.
36. The Taxpayer alleged that the Subject Property should be valued using only the actual rent and expenses for the Subject Property.
37. Professionally accepted appraisal techniques hold that because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.¹³
38. The Taxpayer has not established that the actual income and expenses for the Subject Property are reflective of typical income and expenses.

¹³ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

39. 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.
40. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 3,600
<u>Improvements</u>	<u>\$54,500</u>
Total	\$58,100

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 2019.

7. This Decision and Order is effective on July 7, 2023.

Signed and Sealed: July 7, 2023



Steven A. Keetle, Commissioner