

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

STANTON L. SHIRK
APPELLANT,

CASE NO: 19R 0344

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 0843280000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$217,700 for tax year 2019.
3. Stanton L. Shirk (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 \$217,700 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 August 31, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Stanton Shirk was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (County Appraisers) 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 Subject Property is a 1,837 square foot one and one-half story finished residence with a construction type of frame with masonry veneer that was built in 1933. The Subject Property has a quality of construction rating of good and a condition rating of average.
17. The County Board presented the 2019 Property Record Files (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
18. The Taxpayer argues that the valuation of the Subject Property was reduced by the County Board for the 2021 assessment, and it should be reduced to that same amount for tax year 2019.
19. The Taxpayer presented a comparative market analysis of the Subject Property prepared for June of 2021 that, while it does not give a specific value opinion for the Subject Property, does indicate that the 2021 assessment of the Subject Property after Board Action is moderately to significantly lower than its 2021 market value.

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 assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
21. The Taxpayer argues that the condition rating for the Subject Property is incorrect.
22. The Taxpayer presented photographs of the interior and exterior of the Subject Property taken in 2019. These photographs show among other things the driveway, garage walls and ceiling, bathroom, one of the rooms on the second floor, plaster work, basement. The Taxpayer also presented photographs of the exterior of the Subject Property taken in 2021 that he stated reflect the condition of the Subject Property in 2019 showing exterior doors, exterior brickwork, section of backyard landscaping, and carpet.
23. The Taxpayer presented a list showing comparable property evaluations, features that further depreciate and value of added features that list repairs, maintenance, remodeling, and renovation items that exist in or could be done on the Subject Property along with internet marketing materials and DIY guides to support the costs shown on the lists.
24. The photographs and feature listing presented by the Taxpayer do not show that the condition rating of average for the Subject Property is unreasonable, arbitrary, or incorrect.
25. The Taxpayer alleges that the condition of the sold properties rated as average condition are superior to the condition of the Subject Property and therefore the value of the Subject Property is actually higher than other properties used as comparable to the Subject Property by the County.

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

26. The Taxpayer presented a table of subdivision sales results from January of 2019.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
28. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹²
29. The Taxpayer did not present the PRFs for the properties listed on the table of comparable property evaluations or the table of subdivision sales results. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers charts to the Subject Property.¹³
30. The Commission is unable to determine the comparability of the properties presented by the Taxpayer to the Subject Property.
31. The County Appraisers stated that the per square foot assessed value of the Subject Property is below the median sales price per square foot and below the median assessed value per square foot for properties with the same quality and condition rating in the market area shown on the sales report presented by the County Board.

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on December 10, 2020, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

32. The per square foot assessed value of the Subject Property is also lower than the median sales price per square foot shown by each of the tables presented by the Taxpayer.
33. The properties presented by the Taxpayer that have a lower per square foot sales price than the per square foot assessed value of the Subject Property have a lower quality of construction rating or a lower condition rating than the Subject Property.
34. 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.
35. 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	\$ 38,700
<u>Improvements</u>	<u>\$179,000</u>
Total	\$217,700
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 February 8, 2023.

Signed and Sealed: February 8, 2023



Steven A. Keetle, Commissioner