

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

RICHARD P. ESSI,
APPELLANT,

CASE NO: 20R 0012

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE SARPY COUNTY
BOARD OF EQUALIZATION

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Sarpy County, parcel number 011574484.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$224,937 for tax year 2020.
3. Richard P. Essi (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$224,937 for tax year 2020.
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 3, 2021, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Richard Essi was present at the hearing for the Taxpayer.
8. Andrea Gosnold-Parker and Katherine Devney with the Sarpy County Attorney's office and Shane Grow and Jameson McShane with the County Assessor's Office (the 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 0.221-acre parcel improved with a 1,323 square foot ranch style duplex built in 2006.
17. The Taxpayer purchased the Subject Property, together with an adjoining parcel, in January of 2019, as part of a single transaction for \$385,000.
18. The sales listing for the Subject Property indicates that it would only be sold with the adjoining parcel and that it was being sold "as is." The Taxpayer stated that the Subject Property was on the market for a significant amount of time and that obtaining a loan for the purchase was difficult because the sale was combined with another parcel.
19. The Taxpayer alleged that the value of the Subject Property for tax year 2020 should be either the sale price or the prior years assessed value with four percent added to either number for the value increase from the prior year.
20. The Courts have held that "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

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).

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 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 assessed value for real property may be different from year to year, dependent upon the circumstances.¹¹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹²
22. The County Appraiser stated that they do not use multi parcel sales when setting values because it is too difficult to allocate the sales price between the multiple parcels.
23. The County Appraisers stated that they did not consider the sale of the Subject Property to be representative of market value.
24. The County Appraisers stated that because the sale of the Subject Property was tied to the sale of the neighboring parcel it would not be representative of the market value of either parcel being sold on its own.
25. The County Appraisers stated that another reason that the sale of the Subject Property was not considered a valid sale was because the co-purchaser of the Subject Property was listed as the selling agent in the multiple listing service.
26. The County Board presented a packet of information regarding the valuation of the Subject Property including an appraiser’s statement of the assessment of the Subject Property, the Property Record Card (PRF) for the Subject Property, the PRF for three equalization comparables, the PRF for three

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

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

¹¹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹² 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).

comparable sales, sales listing information, and reports regarding all sales in the subdivision.

27. The legal description of the Subject Property in the PRF shows that it is not combined with the adjacent parcel and is a separate parcel from the adjacent property.
28. The County Appraisers stated that when reviewing the sale of the Subject Property it was discovered that there were 1,275 square feet of basement finish that were not accounted for in the county records which were added to the value of the Subject Property for tax year 2020.
29. The Subject Property is one of only four duplex properties in the subdivision in which it is located. The County Appraisers stated that because of this they looked to sales of the villa ranch properties in the subdivision and sales of similar duplexes in nearby subdivisions.
30. The County Appraisers indicated that using the sales of villa ranch properties and sales of similar duplexes in nearby subdivisions resulted in a valuation model that increased values of duplexes in the Subject Property's subdivision by approximately 0.5% from the assessed value for the prior year. The reports provided by the County Board show that accounting for changes in characteristics (i.e. additions, remodeling, etc) the valuation of the villa ranch properties and the duplex properties increased by 0.5% overall.
31. The County Appraisers stated that the value of the Subject Property increased more than 0.5% due to the change in the characteristics of the Subject Property due to the basement finish.
32. The information presented does not support the use of the Taxpayers purchase of the Subject Property in determining actual value.
33. The Taxpayer alleged that the Subject Property was not being equalized with the other two duplex properties in the neighborhood.

34. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹³
35. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
36. The PRFs presented by the County Board show that the Subject Property and the two other duplex properties in the neighborhood are all valued using the same methodology, differing only for amenities, the largest difference being amount of basement finish.
37. The duplex properties presented by the Taxpayer as being valued lower than the Subject Property do not have any basement finish while the Subject Property has a portion of its basement that is finished.
38. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
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.

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 36,000
<u>Improvements</u>	<u>\$188,937</u>
Total	\$224,937

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2020.
7. This Decision and Order is effective on February 21, 2023.

Signed and Sealed: February 21, 2023



Steven A. Keetle, Commissioner