

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

BRYAN R. MCCARTNEY
APPELLANT,

CASE NOS: 20R 0115 & 21R
0182

V.

HALL COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property consists of an improved residential parcel in Hall County, parcel number 400049708.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$192,421 for tax year 2020 and \$250,782 for tax year 2021.
3. Bryan R. McCartney (the Taxpayer) protested these values to the Hall County Board of Equalization (the County Board) and requested assessed values of \$192,421 for tax year 2020 and \$164,556 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$192,421 for tax year 2020 and \$250,782 for tax year 2021.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 20, 2022, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor., before Commissioner James D. Kuhn.

7. Bryan and Jennifer McCartney were present at the hearing for the Taxpayer.
8. Sarah Carstensen (County Attorney) and Kristi Wold (the Assessor) 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

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.

- 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
 14. A Taxpayer must introduce competent evidence of actual value of the Subject Property 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 the Subject Property is in an older neighborhood where most of the homes were built in the 1970's with some homes being built between 1940 and 1969. The Subject Property was built in 1994. The Taxpayer stated the Kennedy Drive area has homes of similar age and is more modern with homes having 2 car attached garages.
17. The Taxpayer focused on three comparable properties, 1227 Kennedy Drive, 1019 Kennedy Drive, and 3207 Dixie Square. A spreadsheet was provided showing the three comparable properties being assessed at a lower price per square foot than the Subject Property. Property Record Files (PRF) were provided for the three comparable properties.
18. The Assessor provided a spreadsheet showing the Taxpayers comparable properties with the square footage as well as the basement size and finishes. The Subject Property has a fully

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).

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).

finished basement of 1,574 square foot, whereas the three comparable properties have 158 square feet of finish, 762 square feet of finish, and no basement finish per the PRF's provided by the Assessor. The price per square foot of improvements for the Subject Property is \$111.82, and \$102.97 to \$103.76 for the comparables.

19. The Assessor provided properties as equalization comparables as well as comparable properties that have sold. The Assessor stated the equalization and sales comparable properties show the Subject Property is being valued fairly and equally with similar properties.
20. The PRF's of comparable properties provided by the Taxpayer show the Assessor's information is correct as to the difference in basement sizes and finishes which will affect the price per square foot. The recent sales show increasing values on similar properties as well, with all the sales showing a higher price per square foot than the Subject Property. The most similar properties show the current assessments to be fair and equalized.
21. 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.
22. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020 and 2021 are affirmed.

2. The taxable value of the Subject Property for tax years 2020 and 2021 are:

2020

Land	\$16,412
<u>Improvements</u>	<u>\$176,009</u>
Total	\$192,421

2021

Land	\$16,412
<u>Improvements</u>	<u>\$234,370</u>
Total	\$250,782

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 years 2020 and 2021.
7. This Decision and Order is effective on June 2, 2023.

Signed and Sealed: June 2, 2023



James D. Kuhn, Commissioner