

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

BEVERLY A. STARKEY  
APPELLANT,

CASE NO: 20R 0394

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 a residential condominium parcel in Douglas County, parcel number 2118612942.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$911,600 for tax year 2020.
3. Beverly A. Starkey (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 \$911,600 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 March 17, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Beverley Starkey 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential condominium located on the tenth floor of a residential tower located on riverfront plaza and adjacent to another residential tower and the Missouri River.
17. The Taxpayer alleges that the assessed value of the Subject Property is higher than market value due to the comparable properties from the other tower used to determine its value.
18. The County Board presented the PRF for the Subject Property. The PRFs contain 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 for each of the tax years at issue.
19. The PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2019 and that value remained the same for tax year 2020.
20. The County Board presented a list of recent valid sales in the Subject Property's market area to support the assessed value of the Subject Property.

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. The list of recent valid sales indicates that the tower in which the Subject Property is located is a single market area while the adjacent tower is a separate market area.
22. The County Appraisers stated that the sales that were used to determine values for the Subject Property were those from the same market area as the Subject Property which are all located in the same tower.
23. The Taxpayer presented real estate listings for six other residential condominium properties three located in the same tower as the Subject Property and three in the adjacent tower.
24. The County Appraisers stated that all but two of the sales presented by the Taxpayer would be considered too old to be used by the County Assessor when setting values.
25. The sales prices of these two properties, both of which are located in the Subject Property's market area/tower, support the assessed values determined by the County Assessor for tax year 2020.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
27. "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."<sup>10</sup>
28. The Taxpayer did not present the PRFs for the properties listed on the table of assessed values. 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

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<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>10</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

different characteristics of the properties contained in the Taxpayers chart to the Subject Property.<sup>11</sup>

29. The Taxpayer did present a chart of information retrieved from the County Assessor's web site. This chart shows that the Subject Property had a higher quality rating than all but one of the sales in its tower and had more square feet of living area<sup>12</sup> and more bathrooms than any other property in the market area/tower that was discussed.
30. The Commission cannot find from the information before it that the properties presented by the Taxpayer are comparable or the adjustments necessary to make them comparable to the Subject Property.
31. The Taxpayer has not demonstrated that sales show that the assessed value of the Subject Property is higher than market value.
32. Further the Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with that of other comparable properties.
33. 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.
34. 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.

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<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 28, 2022, 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.*

<sup>12</sup> The information presented indicates that there are two condominiums on the Subject Property's floor while the lower floors have three condominiums per floor.

**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                | \$ 60,900        |
| <u>Improvements</u> | <u>\$850,700</u> |
| Total               | \$911,600        |

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 2020.
7. This Decision and Order is effective on May 17, 2023.

Signed and Sealed: May 17, 2023



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Steven A. Keetle, Commissioner