

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

DOUGLAS C. ROBERTSON,
APPELLANT,

CASE NO: 20R 0406

V.

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

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 1722470000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$246,600 for tax year 2020.
3. Douglas C. Robertson (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 \$215,000 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 August 22, 2022, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Douglas C. Robertson was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis 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 Taxpayer alleged that the value of the Subject Property should be reduced based on its condition.
17. The County Board presented the 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, including the sale 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 PRF shows that the Subject Property is a 2,460 square foot two and one-half story finished home with a condition rating of good.
19. The County Board presented the sales listing for the 2019 sale of the Subject Property including descriptions and photographs of the interior and exterior of the Subject Property.
20. The Taxpayer presented photographs of the windows, siding, and roof of the Subject Property.
21. The Taxpayer discussed the condition of the Subject Property as reflected in the photographs.
22. The Taxpayer presented an itemized estimate for the replacement of the roof on the Subject Property and general

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).

- estimates for the replacement of the gutters, downspouts, and windows.
23. The Taxpayer alleged that the condition rating of the Subject Property should be reduced because it was reduced by the County Assessor's office for the 2022 tax year.
 24. The 2022 PRF was not presented showing the revised determination for the condition rating. The valuation history presented by the County Board with the 2020 PRF indicates that the market area in which the Subject Property is located was reappraised for the 2022 tax year and the assessed value of the Subject Property increased as a result of this reappraisal.
 25. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹
 26. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
 27. The County Appraisers stated that condition ratings are based on the condition of the entire property both interior and exterior and that based on the exterior photographs presented by the Taxpayer as well as the photographs in the sales listing for the Subject Property their opinion was that the condition rating of good was correct for the 2020 tax year.
 28. The Taxpayer did not present information to show that the determination of condition made by the County Assessor's office for the 2020 tax year was unreasonable or arbitrary.

⁹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁰ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹¹ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

29. The County Appraisers stated that a decrease in the condition rating would result in an increase in the depreciation applied in the valuation model.
30. The County Board reduced the value of the Subject Property from its value determined by the Assessor's Office as in good condition by \$31,600 for tax year 2020. When this amount is added to the depreciation it would increase the depreciation rate applied from 42.72% to approximately 51.30%.
31. From the information presented a depreciation rate of 51.30% would be reasonable depreciation rate for a property of the same age and style as the Subject Property in average condition.
32. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
33. The Taxpayer presented the PRFs for 21 properties that he alleged were comparable to the Subject Property.
34. The Taxpayer's requested value was determined by averaging the assessed values of the 21 other properties, or the sales values of four of these properties that recently sold, and then applying the averaged per square foot value to the Subject Property. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Property as defined by statute.¹³ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal method would be required. No evidence was presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
35. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments[.]"¹⁴

¹³ See Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

36. Additionally, a review of the PRFs presented by the Taxpayer show that there are significant differences between the style, quality, condition, age, and amenities between them and the Subject Property.
37. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁵
38. “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.”¹⁶
39. The County Appraisers stated that several of the properties presented by the Taxpayer were located in different market areas than the Subject Property.
40. The information before the Commission shows that the differences in assessed values between the Subject Property and the other properties presented are due to differences in their location, style of construction, age, quality, condition characteristics, and amenities.
41. 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.
42. 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:

¹⁵ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁶ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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	\$ 18,600
<u>Improvements</u>	<u>\$196,400</u>
Total	\$215,000

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 August 3, 2023.

Signed and Sealed: August 3, 2023



Steven A. Keetle, Commissioner