

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

JEFFREY M. RENSCH,
APPELLANT,

CASE NO: 20R 0588

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 937220000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$566,700 for tax year 2020.
3. Jeffrey M. Rensch (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 \$566,700 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 September 16, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Jeff Rensch 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 Subject Property is a residential parcel improved with a 4,344 square foot two-story duplex constructed in 1941. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
18. 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
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
20. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on the purchase price of the Subject Property in 2016.

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).

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)

21. “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 the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”¹³ “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.”¹⁴
22. The purchase of the Subject Property occurred over three years from the assessment date at issue before the Commission.
23. The County Appraisers stated that the sale of the Subject Property would not have been used in the assessment of properties in tax year 2020 because it was over three years from the assessment date.
24. 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. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
25. The Taxpayer alleges that using the cost approach to valuation by the County was unreasonable or arbitrary.
26. The County Appraisers stated that the County Assessor used the cost approach to value to assess all residential properties in the Subject Property’s market area and calibrated the cost approach model utilizing sales from within that market area.

¹³ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁴ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

27. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁵ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁶
28. The Taxpayer alleged that a recent sale of a nearby property demonstrates that the assessed value of the Subject Property should be reduced.
29. The Taxpayer presented a sales listing for a nearby property that sold in July of 2022 (the July 2022 Sale).
30. The County Appraisers stated that the July 2022 Sale was in a different market area than the Subject Property and would not be used to value the Subject Property.
31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁷
32. “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.”¹⁸
33. The Commission is unable to find that the July 2022 Sale is comparable to the Subject Property or the adjustments to value that would make the July 2022 Sale comparable to the Subject Property.
34. The Taxpayer did not present the PRFs for the July 2022 Sale. Accordingly, the Commission cannot see the basis for the determination of assessed value for the improvements on the July 2022 Sale or compare its characteristics to the characteristics of the improvements on the Subject Property. The Commission is unable to determine the contribution of the

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁸ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

different characteristics of the improvements on the July 2022 Sale to the improvements on the Subject Property.¹⁹

35. The Commission is unable to find that the July 2022 Sale is comparable to the Subject Property or the adjustments to value that would make the July 2022 Sale comparable to the Subject Property.
36. If utilized to determine value based on the information provided without adjustment, the July 2022 Sale appears to support a higher assessed value for the Subject Property, however the Commission cannot make that determination without additional information.
37. The Taxpayer alleges that the Subject Property should be valued using the income approach.
38. The Taxpayer presented copies of leases for the Subject Property.
39. The Taxpayer offered limited information regarding expenses and repairs for the Subject Property.
40. Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.²⁰
41. The Taxpayer did not present information to demonstrate market income or expense amounts for rental properties in the

¹⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 29, 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.*

²⁰ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

area to allow the Commission to determine typical or stabilized income and expenses.

42. 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.
43. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

| | |
|---------------------|------------------|
| Land | \$ 82,900 |
| <u>Improvements</u> | <u>\$483,800</u> |
| Total | \$566,700 |

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 2020.

7. This Decision and Order is effective on September 18, 2023.

Signed and Sealed: September 18, 2023



Steven A. Keetle, Commissioner