

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

MICHAEL KHALILI
APPELLANT,

CASE NO: 21R 0183

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Sarpy County, parcel number 011603106.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$704,398 for tax year 2021.
3. Michael Khalili (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 \$704,398 for tax year 2021.
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 February 21, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Khalili was present at the hearing for the Taxpayer.
8. Martin Becker and Jackie Morehead 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 1.¹
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 1.757 acre residential parcel improved with a 3,127 square foot two-story residence.
17. The Taxpayer alleged that the square footage of the Subject Property in the county records was incorrect, however at the hearing the Taxpayer did not proceed with that argument as the parties were unable to schedule an inspection of the Subject Property.
18. The Taxpayer alleged that the valuation increase from the prior year is too great and that the increase was greater than that of other comparable properties.
19. Nebraska law provides that all taxable real property is to be assessed as of 12:01 a.m. on January 1, with that assessment to be used as the basis of taxation until the next regular assessment.⁹
20. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ A prior year's assessment is not relevant to the subsequent year's valuation.¹¹

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 Neb. Rev. Stat §77-1301 (CITE, Law last changed may of 2019)

¹⁰ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ *DeVore, Affiliated Foods*, see also *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

21. The difference in valuation increase between the Subject Property and other properties would be relevant if it resulted in valuations for tax year 2021 that were not equalized.
22. The Taxpayer alleged that the Subject Property was not being equalized with other comparable properties.
23. “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.”¹²
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
25. The Taxpayer presented two spreadsheets containing properties that were located near the Subject Property. The Subject Property had the highest assessed value of the properties shown and had a per square foot valuation that was among the highest. The Taxpayer presented the Property Record File (PRF) for the Subject Property and the properties contained on the Taxpayer’s spreadsheets.
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 six sales comparables, the PRF for two equalization comparables, a listing of all of the lot sales in the Wynnwood Subdivision, a table of the valuation methodology for the lots in the Wynnwood subdivision, and other statistical reports.
27. The County Appraiser stated that the land studies conducted by the County Assessor’s office indicated that the lots in the Wynnwood subdivision and the neighboring Copper Ridge subdivision were marketed and sold differently and that the

¹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

sales from the two subdivisions showed a difference in the land values between the two subdivisions.

28. The County Appraiser presented a listing of all lot sales in the Wynnwood subdivision as well as a table showing the valuation methodology for that subdivision. The values for the lots in the subdivision were adjusted for their proximity to a busy road or creek, location on a cul-de-sac, small or “XL” lots, and lots with a better view.
29. The Subject Property has a lot classified as a view lot which has a higher assessed value.
30. The PRFs provided by the Taxpayer and the County Board show that the differences in overall value per square foot are due to differences in the characteristics of the improvements on the property such as type of construction, quality of construction, condition, age, amount of above ground square footage, amount of basement finish, garages, fireplaces, porches, paving and patios, swimming pools, outbuildings, and decks.
31. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
32. 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.
33. 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 2021 is affirmed.

2. The taxable value of the Subject Property for tax year 2021 is:

| | |
|---------------------|------------------|
| Land | \$170,000 |
| <u>Improvements</u> | <u>\$534.398</u> |
| Total | \$704,398 |

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 2021.
7. This Decision and Order is effective on March 6, 2023.

Signed and Sealed: March 6, 2023



Steven A. Keetle, Commissioner