

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

CRYSTAL J. HANKINS
APPELLANT,

CASE NO: 21R 0461

V.

DECISION AND ORDER
REVERSING THE DECISION
OF THE CASS COUNTY
BOARD OF EQUALIZATION

CASS COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Cass County, parcel number 130391333.
2. The Cass County Assessor (the County Assessor) assessed the Subject Property at \$283,730 for tax year 2021.
3. Crystal J. Hankins (the Taxpayer) protested this value to the Cass County Board of Equalization (the County Board) and requested an assessed value of \$261,000 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$321,120 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 October 19, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Crystal J. Hankins was present at the hearing for the Taxpayer.
8. Dana Long (Deputy 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 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 provided an appraisal with an indicated value of \$261,000 for the 2021 tax year. The appraisal was done by the Taxpayer as she is a Certified Residential Appraiser in the State of Nebraska. The Taxpayer stated in her appraisal that the Taxpayers personal interest in the Subject Property did not affect the research and results of the appraisal.
17. The Taxpayer provided multiple listing service (MLS) documents of comparable properties. However, the Taxpayer did not provide the property record files (PRF) for these comparables. Without PRF's for the comparable properties, the Commission can not accurately determine if they are truly comparable to the Subject Property.
18. The Deputy Assessor stated the Assessors Office has a new recommendation of value after inspecting the Subject Property for the hearing and making corrections to the PRF. The new recommendation of value is \$299,665.
19. The Deputy Assessor provided a spreadsheet of comparable properties in the same neighborhood as the Subject Property. The comparable properties are of the same quality and condition as the Subject Property with many similar components. The median price per square foot of the comparables is \$147.42

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).

whereas the Subject price per square foot is \$144.37 (per the new recommendation of the Assessor).

20. The Taxpayers submittal of an appraisal done on her own property for a valuation appeal brings into question a possible violation of the Ethics Rule in the Uniform Standards of Professional Appraisal Practices (USPAP).⁹ Under the Ethics Rule it states: An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests. It further states that an appraiser “must not advocate the cause or interest of any party or issue;”.¹⁰ Although the appraiser stated in her appraisal that the Taxpayers personal interest in the Subject Property did not affect the research and results of the appraisal, one can not discount that the Taxpayer has personal interest and possible gain in this appeal.
21. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. Clear and convincing evidence has been produced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

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:

⁹ Uniform Standards of Professional Appraisal Practice, 2020-21 Edition, at 7.

¹⁰ *Id.*

Land	\$ 32,000
<u>Improvements</u>	<u>\$267,665</u>
Total	\$299,665

3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass 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 June 9, 2023.

Signed and Sealed: June 9, 2023



James D. Kuhn, Commissioner