

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

ALAN D. SEYBERT,
APPELLANT,

CASE NO: 21R 0551

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 2245240296.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$356,600 for tax year 2021.
3. Alan D. Seybert (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 \$335,000 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 January 13, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Alan Seybert 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 two-story residence constructed in 1999. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the assessment of the Subject Property relied on incorrect information.
18. The Taxpayer presented an appraisal report of the Subject Property prepared for the subsequent assessment date of January 1, 2022. The appraisal report does not contain an opinion of value for the assessment date at issue before the Commission in the present appeal.
19. The appraisal report indicated that the Subject Property has 2,673 square feet of above ground living area.
20. The County Board presented the Property Record File (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.
21. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.

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).

22. The PRF indicates that the Subject Property has 2,731 square feet of above ground living area.
23. The County Appraisers stated that the assessed value of the Subject Property, recalculated using the County Assessor's valuation model and the revised square footage, would be \$323,900 for tax year 2021.
24. The Taxpayer alleged that the cost method used by the County Assessor was inaccurate and that only the sales comparison method could be used.
25. "[U]nder §§ 77-103.01, 77-112, and 77-1363, assessors are not limited to a single method of determining the actual value of property for tax purposes. Rather, assessors are charged with a duty to consider a wide range of relevant factors in order to arrive at a proper assessment which does not exceed actual value."⁹
26. The County Appraisers discussed the cost model utilized by the County Assessor's office to determine assessed values and the use of recent comparable sales to calibrate the cost model.
27. "Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. §77-1371, (2) income approach, and (3) cost approach."¹⁰
28. While "[t]he cost approach is more reliable for newer structures of standard materials, design, and workmanship."¹¹ "The cost approach is applicable to virtually all improved parcels and, if used properly, can produce accurate valuations."¹²
29. The Taxpayer presented a spreadsheet that listed information about the Subject Property and other recently sold properties in the same neighborhood.

⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 853, 906 N.W.2d 285, 299 (2018).

¹⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹¹ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

¹² International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

30. The Taxpayer presented the PRF for the seven properties listed on the Taxpayer's spreadsheet.
31. These seven properties are part of the nine two story property sales in the Subject Property's market area used to establish assessed values properties in that same market area, including the Subject Property, for the 2021 assessments.
32. The Taxpayer's spreadsheet makes adjustment to the sales prices of the properties listed for different characteristics and amenities.
33. The Taxpayer stated he had worked for a real estate firm in the past, had reviewed appraisal reports, and was familiar with the appraisal process.
34. The Taxpayer is not a licensed real estate appraiser.
35. The Taxpayer stated that he determined the adjustments on the Taxpayers spreadsheet based on the adjustments made on the appraisal report of the Subject Property for the subsequent tax year.
36. Information to support the Taxpayer's adjustments for the assessment year at issue before the Commission was not presented.
37. Further, the Taxpayer's spreadsheet determines an adjusted sales price for the Subject Property based on the average of the adjusted sales prices of the seven other neighborhood properties.
38. "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."¹³
39. The Taxpayer did not present evidence demonstrating the methodology used by the Taxpayer met professionally accepted appraisal practices.

¹³ Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

40. The methodology presented by the Taxpayer in the Taxpayer's spreadsheet does not demonstrate clear and convincing evidence of the market value of the Subject Property.
41. The Commission finds that the assessed value of the Subject Property for tax year 2021 is \$323,900, with \$63,700 allocated to the land component and \$260,200 allocated to the improvements.
42. The Taxpayer has 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 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 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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 63,700
<u>Improvements</u>	<u>\$260,200</u>
Total	\$323,900
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 2021.
7. This Decision and Order is effective on February 9, 2024.

Signed and Sealed: February 9, 2024



Steven A. Keetle, Commissioner