

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

RICHARD GOMMERMANN,
APPELLANT,

CASE NO: 21R 0563

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 0108140002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$776,100 for tax year 2021.
3. Richard Gommermann (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 \$776,100 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 December 7, 2022, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Richard Gommermann was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) 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 Subject Property is a 10.36-acre residential parcel improved with a 3,489 square foot ranch style residence and 2,400 square foot outbuilding constructed in 1985 and 1986 respectively. The improvements on the Subject Property have quality ratings of good and condition ratings of average.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property, particularly the land value, 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
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
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

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

the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.

21. The County Appraiser stated that the market area in which the Subject Property is located was reappraised for tax year 2020 and 2021.
22. The County Appraiser stated that land in the Subject Property's market area was assessed at \$40,000 per acre for tax year 2021 based on sales and lot sizes.
23. The County Board presented a list of all recent valid vacant land sales near the Subject Property with sales prices that ranged between \$94,000 and \$316,000 per acre.
24. The County Board presented a map of the subdivision in which the Subject Property is located showing that the land component of all of the residential properties in the subdivision are assessed at \$40,000 per acre.
25. The Taxpayer has not demonstrated that the assessment of the land component of the Subject Property for tax year 2021 was unreasonable or arbitrary.
26. The Taxpayer alleged that the assessed value of the Subject Property for tax year 2021 was too high based on the purchase price of \$575,000 in January of 2019. The Taxpayer presented the Real Estate Transfer Statement Form 521 for the 2019 sale of the Subject Property.
27. The County Board presented a list of recent sales in the market area of the Subject Property to support the assessed value.
28. The County Appraiser stated that the sale of the Subject Property determined by the County Assessor's office to be a non-arm's length transaction and was not considered to be a valid sale due to the circumstances of the sale. The sale of the Subject Property was also older and outside the time window for sales used to determine assessed values for tax year 2021.
29. The Taxpayer stated that he purchased the Subject Property through a real estate agent but that he did not know if the

property was listed for sale to the public at the time of the 2019 purchase.

30. “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.”¹² “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.”¹³
31. The Taxpayer presented a table of properties in the same subdivision as the Subject Property that showed assessed values and sales.
32. The County Board presented sales listing information for two of the sales on the Taxpayer’s table of properties, which included a sale listing for the Subject Property in 2022.
33. The sales listings show different information regarding the sold properties than the Taxpayer’s table, such as above ground square footage, bedrooms, etc.
34. The Taxpayer’s table does not list many characteristics and amenities that would impact value such as quality, condition, style of construction, fireplaces, garages¹⁴, basement size, finished basement square footage, decks, patios, etc.
35. The Taxpayer did not present the PRFs for the properties on the tables presented. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties

¹² . *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹³ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹⁴ Information regarding a garage for one property is listed.

presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹⁵

36. The Taxpayer has not demonstrated that the assessed value of the Subject Property should be based on the amount shown on the Real Estate Transfer Statement Form 521 for the 2019 sale.
37. The Taxpayer has not presented sales or market information to show that the assessed value of the Subject Property for tax year 2021 is unreasonable or arbitrary.
38. 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.
39. 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:

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 13, 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.*

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| Land | \$414,400 |
| <u>Improvements</u> | <u>\$361,700</u> |
| Total | \$776,100 |

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 E November 28, 2023.

Signed and Sealed: November 28, 2023



Steven A. Keetle, Commissioner