

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

BRIAN W. MOEN,
APPELLANT,

CASE NO: 21R 0599

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

For the Appellant:

Brian W. Moen

For the Appellee:

Jennifer D. Chrystal-Clark,
Deputy Douglas County
Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$1,435,300 for tax year 2021. Brian W. Moen (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a lower

taxable value. The County Board determined that the taxable value of the Subject Property for tax year 2021 was \$1,435,300.¹

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on July 27, 2023. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1 through 11 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.² When the Commission considers an appeal of a decision of a county board of equalization, 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

¹ Exhibit 1.

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁴ *Id.*

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 Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.⁸

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.⁹ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁰ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

⁹ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹²

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.¹³ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.¹⁴ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.¹⁵ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁶ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁵ Neb. Rev. Stat. § 77-131 (Reissue 2018).

¹⁶ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

except as otherwise provided in or permitted by the Nebraska Constitution.¹⁸ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁰ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²¹ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.²² If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.²³ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.²⁴

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The Taxpayer testified that he believed the quality and condition of the Subject Property should both be reduced to good based on five properties offered as comparables. The Taxpayer testified that he had been in several of the properties offered as comparables. The Taxpayer presented a table listing information about the Subject Property and

¹⁸ Neb. Const., art. VIII, § 1.

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁰ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623 (1999).

²¹ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

²² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²³ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (citations omitted).

²⁴ *Id.* at 673, 94 N.W.2d at 50.

five other properties that he alleged were comparable to the Subject Property and requested an assessed value based on the average per square foot values of these five other properties. The Taxpayer stated that the assessed value of the Subject Property was decreased in a subsequent tax year which he felt supported his position that the current years assessment was too high.

The County Board presented the testimony of Scott Barnes with the Douglas County Assessor/Register of Deeds Office. Barnes testified that the County Assessor determined value based on the characteristics of properties and recent sales of comparable properties. The County Board presented a table of all recent sales in the Subject Property's market area. Barnes testified that assessed values in different tax years could be different based on the sales that occurred which would be different every assessment year.

B. Analysis

The Taxpayer's first allegation was that the quality and condition ratings of the Subject Property should be reduced. The Taxpayer testified he had been inside several of the five other properties he presented and that he felt they were comparable. The other evidence presented was the PRF for the Subject Property and each of the properties offered by the Taxpayer.

Examination of both materials and workmanship is fundamental when determining the overall quality of construction.²⁵ While the quality of materials and workmanship of individual building components may vary, the overall quality will tend to be consistent for the entire residence.²⁶ Furthermore, the quality of materials and workmanship will tend to influence each other.²⁷ "Design can be another indication of quality. Residences of low quality utilize stock plans and usually have a simple floor plan. Higher-quality residences

²⁵ Marshall & Swift, *Residential Cost Handbook 6* (Dec. 2021).

²⁶ Marshall & Swift, *Residential Cost Handbook 6* (Dec. 2021).

²⁷ Marshall & Swift, *Residential Cost Handbook 6* (Dec. 2021).

are often individually designed with considerable attention given to detail.”²⁸

The majority of the evidence before the Commission regarding the quality of materials, workmanship, or design of the Subject Property and the other properties presented is contained in the PRF for each property. This information includes a photograph, built as information, area sketch, and account notes for each property. The County Board provided the MLS agent detail for the Subject Property further listing its characteristics and amenities. There is no evidence before the Commission which would allow it to determine that the quality rating of the Subject Property or any of the properties offered as comparable by the Taxpayer are incorrect or should be changed.

A condition rating is based on several factors including but not limited to type of construction (i.e., brick, stucco, siding, etc.), age, required maintenance, and general upkeep of a property. The Taxpayer testified that the Subject Property needed repainting, had windows that needed to be caulked, and that the driveway needed repair. The Taxpayer did not provide information regarding the extent of the issues indicated, or the cost of repair or remediation of these issues. The PRFs show that the Subject Property was constructed in 2013 making it newer than all of the other properties presented by the Taxpayer but one, and both of those properties have a condition rating of very good.²⁹ The Taxpayer has not provided evidence to allow the Commission to determine that the condition rating of the Subject Property, or any of the other properties presented, was arbitrary, unreasonable, or incorrect.

Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.³⁰ The PRFs for the Subject property and the other properties presented by the Taxpayer indicate significant

²⁸ Marshall & Swift, *Residential Cost Handbook* 6 (Dec. 2021).

²⁹ See, Exhibit 2 and Exhibit 9

³⁰ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

differences when looking at style of construction (i.e., 1.5 story, 2 story, etc.), quality, and condition. Additionally, there are differences in lot size, amount of basement finish, garage size, patios, decks, swimming pool, and other characteristics between the properties. “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.”³¹ While none of the properties presented by the Taxpayer has sold recently, other than the Subject Property, this same principle regarding adjustments necessary to make properties comparable applies. However, there was no information presented regarding adjustments to these properties to make them comparable to the Subject Property. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.

A determination of actual value may be made by using professionally accepted mass appraisal methods.³² The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.³³ The Taxpayer’s opinion of value was determined by averaging the per square foot values of non-comparable properties.³⁴ The Taxpayer’s method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives no weight to it.

Lastly is the Taxpayers contention that a reduction in the assessed value for tax year 2023 indicates that the assessed value for tax year 2021 should be reduced. The assessed value for real property may be different from year to year according to the circumstances.³⁵ For this

³¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

³² Neb. Rev. Stat. § 77-112 (Reissue 2018).

³³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

³⁴ Exhibit 4

³⁵ *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).

reason, a prior year's assessment is not relevant to the subsequent year's valuation.³⁶ Testimony indicates that the sales used to determine assessed value for a different tax year can vary leading to changed in assessed value. The only evidence of sales in the Subject Property's market area are the sales utilized by the County Assessor's office for tax year 2021.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2021 is affirmed.
2. The assessed value of the Subject Property for tax year 2021 is:

Land	\$ 132,100
<u>Improvements</u>	<u>\$1,303,200</u>
Total	\$1,435,300

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)

³⁶ *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).

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 for purposes of appeal on November 8, 2024.³⁷

Signed and Sealed: November 8, 2024

SEAL



Steven A. Keetle, Commissioner

James D. Kuhn, Commissioner

³⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.