

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

RANDALL L. HOOVER
APPELLANT,

CASE NO: 21R 0680

V.

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

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is a residential parcel in Lancaster County, parcel number 22-32-300-007-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$393,700 for tax year 2021.
3. Randall L. Hoover (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$393,700 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 20, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Randall L. Hoover was present at the hearing for the Taxpayer.
8. Tim Sealock (the 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 Taxpayer stated the percentage increase in value to the Subject Property is higher than other nearby properties. The increase in value from 2020 tax year to 2021 tax year on properties within one mile from the Subject Property was 23% as compared to other properties that decreased 9% to 16% or increased 4% to 18%.
17. The Taxpayer asserted major construction on the south beltway made access to the Subject Property challenging for several months and their mailbox was relocated one half mile down the road. Detours of up to three miles were endured during the construction of the beltway. The Taxpayer stated the value should not have changed from 2020 to 2021.
18. The County Referee recommended a lower assessment however the Referee Coordinator disagreed saying "listing differences result in different values".
19. The Appraiser stated there was not a percentage adjustment to any of the properties, a reassessment was done, and values were adjusted as a result. Percentages would be different for every property in a reassessment of values. There was no evidence through sales during the time of construction that the construction caused any negative effect on the value of the Subject Property.

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).

20. The Appraiser provided three comparable properties as support of the Assessors value. The three comparable sales are most similar to the Subject Property and adjusted for any differences.
21. The Taxpayer provided a number of comparable properties showing the percentage increase or decrease as well as comparable sales they feel support their claim, however no property record files (PRF) were provided for the for the Commission to analyze the comparability of these properties. Without the Property Record Files for the purported comparable properties, the Commission is unable to see if the comparable properties are truly similar to the Subject Property.⁹ Without being able to analyze the comparable properties against the Subject Property, the Commission can not find in favor of the Taxpayer.
22. 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.
23. 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.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 28, 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.*

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

Land	\$ 90,000
<u>Improvements</u>	<u>\$303,700</u>
Total	\$393,700

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 May 12, 2023.

Signed and Sealed: May 12, 2023



James D. Kuhn, Commissioner