

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

DOUGLAS R. CARTER,
APPELLANT,

CASE NO: 21R 0739

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING 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 0955860000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$346,100 for tax year 2021.
3. Douglas R. Carter (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 \$346,100 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 February 22, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Douglas and Jane Ann Carter were 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 2,178 square foot two story residence constructed in 1923. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property 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 Taxpayer alleged that the assessed value of the Subject Property should be reduced based on the condition of the improvements.
22. The Taxpayer discussed the condition of the roof of the house, water damage to the interior of the home, the roof of the garage, the brickwork on the garage, the roof of the shed, the walls of the shed, the front walk, and the condition of the driveway due to the neighbor's new garage.
23. The Taxpayer presented photographs of portions of the roof of the house, garage, and shed, as well as an interior photo of the impact of the condition of the roofs on the garage, shed, and house on the Subject Property. The Taxpayer also presented a photograph of sections of the front walk and driveway.
24. The Taxpayer presented estimates for the replacement of the tile roofs on the house and garage on the Subject Property from June of 2020, as well as an estimate for the replacement of the garage and driveway from 2006.
25. The Taxpayer discussed approximate costs for the replacement of the shed and driveway and repair of the brickwork on the garage but did not provide estimates or invoices for this work.
26. The County Appraisers stated that the condition rating for a property accounted for the condition of all parts of the Subject Property not just the roof, driveway, and garage.
27. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs and estimates the condition rating of average accounted for the condition of the Subject Property.
28. The County Appraisers stated that the County Assessor's office neither added nor subtracted value for a driveway like the one on the Subject Property and that there was no value attributed to a shed on the Subject Property.

29. The Taxpayer has not demonstrated that the County Assessor's determination of a condition rating of average for the Subject Property was unreasonable or arbitrary.
30. The Taxpayer alleged the assessed value of the Subject Property was not equalized with other comparable properties.
31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
32. "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."¹³
33. The Taxpayer presented a table with information for ten other properties he alleged were comparable to the Subject Property but assessed at a lower amount per square foot than the Subject Property.
34. The Taxpayer requested a valuation of the Subject Property at the average per square foot assessed value of these properties.
35. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁴ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁵ The Taxpayer's opinion of value was determined by averaging assessed values of other properties. 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 little weight to it.

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-112 (Reissue 2018).

36. Additionally, averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.¹⁶
37. The Taxpayer did not present the PRF for the properties listed on the table of properties presented as equalization comparables. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties 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 table to the Subject Property.¹⁷
38. The Taxpayer did present information from the County Assessors web site regarding the ten other properties. This information supports the position that the differences in valuation are due to differences in characteristics between the properties.
39. Differences in basement finish, air conditioning, garage size, roof type, and overall square footage relate to and reasonably account for differences in per square foot assessed values between the properties.
40. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties.
41. 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.
42. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

¹⁶ See, e.g. Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

¹⁷ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 19, 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.*

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:

Land	\$ 64,400
<u>Improvements</u>	<u>\$281,700</u>
Total	\$346,100

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 January 11, 2024.

Signed and Sealed: January 11, 2024



Steven A. Keetle, Commissioner