

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

KEITH L. HARRIS,
APPELLANT,

CASE NO: 21R 0929

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 2326349287.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$356,800 for tax year 2021.
3. Keith L. Harris (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 \$356,800 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 March 7, 2023, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Keith L. Harris 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 2,832 square foot two story home constructed in 2001. The Subject Property as a quality rating of good and a condition rating of average.
17. 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.
18. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2021.
19. The Taxpayer alleged the assessed value of the Subject Property was not equalized with other comparable properties.
20. The Taxpayer presented information from the County Assessor's web site for five other nearby properties.
21. The Taxpayer requested that the value of the Subject Property be \$301,500 based on the average assessed value of these five properties.
22. A determination of actual value may be made by using professionally accepted mass appraisal methods.⁹ The methods

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

expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁰ 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.

23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
24. "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."¹²
25. The Taxpayer did not present the PRFs for the five properties presented as 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 chart to the Subject Property.¹³
26. The information that the Taxpayer did present from the County Assessors web site supports the position that the differences in

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

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹² Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹³ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 17, 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.*

valuation are due to differences in characteristics between the properties.

27. Three of the properties presented by the Taxpayer have a lower value per square foot than the Subject Property but these three properties have no basement finish while the Subject Property has 1,200 square feet of finished basement living space.
28. Two of the properties presented by the Taxpayer have higher per square foot values than the Subject Property but one of these properties has a higher condition rating than the Subject Property and the information about the other property was incomplete.
29. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with the assessed value of other comparable properties.
30. 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.
31. 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:

Land	\$ 47,600
<u>Improvements</u>	<u>\$309,200</u>
Total	\$356,800

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 September 21, 2023.

Signed and Sealed: September 21, 2023



Steven A. Keetle, Commissioner