

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

MARY B. MOSER
APPELLANT,

CASE NO: 22C 0224

V.

SALINE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Saline County, parcel number 760006709.
2. The Saline County Assessor (the County Assessor) assessed the Subject Property at \$260,740 for tax year 2022.
3. Mary B. Moser (the Taxpayer) protested this value to the Saline County Board of Equalization (the County Board) and requested an assessed value of \$177,695 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$260,740 for tax year 2022.
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 June 14, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mary B. Moser was present at the hearing for the Taxpayer.
8. Brandi Kelly (the Assessor) 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 there was a large increase in value from the 2020 tax year to the 2021 tax year and feels the increase was based on the recent purchase price of the Subject Property.
17. The Taxpayer stated there is a retail store on the main floor, three apartments on the second floor with no HVAC, and a basement that has a partially dirt floor. The Taxpayer asserts the age of the Subject Property is inaccurate on the Property Record Files (PRF) and provided photos from the 1870's that depict the Subject Property in them. The Taxpayer stated the age of the Subject Property is 1872. The Taxpayer stated a one-hundred fifty-year-old building would require more maintenance than a new building, so a building that was built in 1872 should have more depreciation due to maintenance needs. The Taxpayer was unable to quantify this effect in the value of the Subject Property.
18. The Assessor provided three comparables for equalization showing the Subject Property is valued at \$30.22 per square foot and the comparables range in value from \$28.76 to \$32.46 per square foot. The Assessor provided three comparable sales showing the Subject Property was purchased for \$33.25 per square foot and the comparable sales ranging in value from \$29.29 to \$41.29 per square foot.

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).

19. The Taxpayer presented the PRF for a comparable property located at 1206 Main Avenue (1206 property). The 1206 property is a single-story building that sold for \$300,000 on 12/10/2020. The Taxpayer asserted the value for the 1206 property has not increased in value after date of purchase like the Subject Property did after the Taxpayer purchased it. The Taxpayer provided other comparable properties at 1230 & 1232 Main Avenue showing the purchase price was higher than the current assessment.
20. The Assessor stated there was a building permit for the Subject Property and assumed it was for remodel of the second-floor apartments. The Taxpayer stated the only thing done on the second floor was to move a water heater from the hallway to the attic. The PRF does not show that any value was added from the building permit.
21. The Commission does not have the evidence from the Taxpayer showing the Assessor's value of the Subject Property is in error, incorrect, or dis-equalized. The Taxpayer has not provided evidence of an alternate value that could be proven by using an accepted mass appraisal method or an independent appraisal.
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 2022 is affirmed.

2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 25,005
<u>Improvements</u>	<u>\$235,735</u>
Total	\$260,740

3. This Decision and Order, if no further action is taken, shall be certified to the Saline County Treasurer and the Saline 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 2022.
7. This Decision and Order is effective on May 24, 2024.

Signed and Sealed: May 24, 2024



James D. Kuhn, Commissioner