

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

BRYAN R. MCCARTNEY
APPELLANT,

CASE NO: 22R 0209

V.

HALL COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Hall County, parcel number 400049708.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$250,782 for tax year 2022.
3. Bryan R. McCartney (the Taxpayer) protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$164,556 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$264,844 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 March 31, 2023, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor., before Commissioner James D. Kuhn.
7. Bryan and Jennifer McCartney were present at the hearing for the Taxpayer.
8. Sarah Carstensen (County Attorney) and Kristi Wold (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 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 they purchased the Subject Property in 2016 for \$215,000. The Taxpayer stated the Subject Property has risen in assessed value nearly 53% since the 2016 purchase.
17. The Taxpayer provided four homes as comparable properties. Three of the comparables were much smaller in square footage with no fully finished basements like the Subject Property has. One of the comparables was much larger in square footage and had no full basement finish like the Subject Property. None of the comparable properties had the same Quality rating of 3.50-Average Plus as the Subject Property and none were from the same Assessor neighborhood.
18. The Assessor provided six comparable properties, five of which were from the same Assessor neighborhood as the Subject Property. Three of the six comparables were similar in size, one having the same Quality and Condition rating as the Subject Property. The price per square foot of the Subject Property is \$139.65, the three comparable size comparable properties range from \$139.38 to \$154.35 per square foot. None of the comparable properties had a fully finished basement similar to the Subject Property.
19. The Taxpayer stated the Assessor added 206 square feet to the Subject Property. The 206 square foot is an exercise room that

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).

used to be garage but has had a wall constructed between the garage and the exercise room. The Taxpayer stated the room has no duct work or no heating or air and should not be considered living area. The Assessor stated they found the exercise room during an inspection and added the square footage since it's current use is similar to living area and not garage use. The current use of the exercise room is clearly not for garage or storage but for similar use as living area.

20. The Assessor provided a spreadsheet of comparable sales to show similar properties are selling for more than current assessments. The Assessor stated the current valuation of the Subject Property is fair and equalized with similar properties.
21. 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.
22. 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 | \$16,412 |
| <u>Improvements</u> | <u>\$248,432</u> |
| Total | \$264,844 |

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 June 6, 2023.

Signed and Sealed: June 6, 2023



James D. Kuhn, Commissioner