

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

AUSTIN M. LEE
APPELLANT,

CASE NO: 22R 0210

V.

LINCOLN COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Lincoln County, parcel number 0090456.25.
2. The Lincoln County Assessor (the County Assessor) assessed the Subject Property at \$322,633 for tax year 2022.
3. Austin M. Lee (the Taxpayer) protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$300,000 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$322,633 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 September 14, 2023., at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, NE, before Commissioner James D. Kuhn.
7. Gina Lee was present at the hearing for the Taxpayer.
8. Julie Stenger, Ashley Gurciullo, and Tyler Volkmer 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 Taxpayer asserted an appraisal of the Subject Property was done in March of 2022.
17. The Taxpayer stated he presented the appraisal report to the referee hearing his protest, and the referee recommended the appraisal value to the County Board.
18. The Taxpayer asserted the valuation should more appropriately reflect that the improvements to Subject Property are incomplete.
19. The County Board testified this is an uncommon structure that is particularly large and the comparable properties that the Taxpayer's appraisal used were not like this structure which is both a workshop and living space.
20. The County Board testified the Taxpayer's appraisal had other inaccuracies such as using all stick-built frame structures as comparable properties and listing incorrect plumbing fixtures.
21. The County Board testified that the Taxpayer's appraisal was done for the purpose of re-financing.
22. The County Board noted a 10% functional depreciation was assigned to account for the incomplete state 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).

23. Additionally, the Taxpayer’s appraisal provides an “adjusted value range... from \$265,000 to \$333,000.” The Taxpayer’s appraisal report shows a final opinion of value of \$300,000.
24. The assessed value of the Subject Property falls within the range provided by the Taxpayer’s appraisal report.
25. 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.
26. 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	\$ 30,065
<u>Improvements</u>	<u>\$ 292,568</u>
Total	\$ 322,633
3. This Decision and Order, if no further action is taken, shall be certified to the Lincoln County Treasurer and the Lincoln 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 October 20, 2023.

Signed and Sealed: October 20, 2023



James D. Kuhn, Commissioner