

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

DANIEL M. PLACZEK,
APPELLANT,

CASE NO: 22R 0500

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 0835080000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$538,300 for tax year 2022.
3. Daniel M. Placzek (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 \$484,470 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 August 22, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Daniel M. Placzek was present at the hearing for the Taxpayer.
8. Scott Barnes and Lisa Humlicek 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 2,738 square foot two story style residence constructed in 1947 and a 1,272 square foot raised ranch style residence constructed in 1962. The two-story residence has a quality rating of good and a condition rating of very good while the raised ranch has quality and condition ratings 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 residential properties in the area, including the Subject Property.
18. The PRF for the Subject Property indicates that the market area in which the Subject Property is located was reappraised for tax year 2022.
19. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior

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).

year's assessment is not relevant to the subsequent year's valuation.¹⁰ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
22. The Taxpayer alleged that the assessed value of the Subject Property was too high based on the September of 2019 purchase price.
23. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."¹³ "Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade."¹⁴
24. The County Board presented a list of recent sales of properties in the same neighborhood as the Subject Property used to determine values for the 2022 assessment.
25. The County Appraisers stated that the sale of the Subject Property was outside the two-year window of sales used by the County Assessor to determine values.

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 *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

¹³ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁴ *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

26. The PRF indicates that the raised ranch style residence on the Subject Property was not complete in that the interior remodel was not finished as of the purchase date.
27. The Taxpayer has not shown that the 2019 sale price of the Subject Property is the actual or fair market value for the 2022 assessment.
28. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
29. The taxpayer requested a total assessed value based on an average per square foot assessed value of three properties that recently sold near the Subject Property
30. The Taxpayer presented information regarding three properties from the subdivision sales results found on the County Assessor's web site.
31. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁵ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁶ 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.
32. Additionally, averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.¹⁷
33. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁸

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

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁷ See, e.g., Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

¹⁸ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

34. “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.”¹⁹
35. The Taxpayer did not present the PRF for the three sold properties. 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.²⁰
36. The information that was presented regarding the three sold properties shows that they are older and have lower condition and quality ratings than the Subject Property. Additionally, there is no information regarding amenities such as fireplaces, garages, basements, etc.
37. The Commission finds that the three sold properties presented by the Taxpayer are not comparable to the Subject Property.
38. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
39. The Taxpayer alleged that the value of the Subject Property is negatively impacted by its location.
40. The Taxpayer stated that the Subject Property is one of only two single family residential properties on its block and that the location of nearby commercial properties, parking lots, large

¹⁹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

²⁰ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 14, 2023, 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.*

apartment buildings, and convenience stores are a detriment to the neighborhood.

41. The Taxpayer presented a map of the blocks surrounding the Subject Property indicating the location of the other properties discussed.
42. The Taxpayer presented photographs taken from the Subject Property showing the proximity of large apartment buildings, parking lots and commercial properties.
43. The Taxpayer further discussed traffic in front of the Subject Property on St. Mary's Avenue and the frequency of firetruck and other emergency traffic from the downtown Omaha fire station.
44. The County Appraisers presented a map of the Subject Property's market area. The County Appraisers stated that they were aware of the presence of the nearby commercial properties, parking lots, large apartment buildings, and convenience stores discussed by the Taxpayer as well as other commercial and industrial properties in the area. The County Appraisers stated that the influence of these non-residential properties impacted the value of all residential properties in the area and that influence was reflected in the sales from the market area that were used to determine values.
45. The County Appraisers further stated that in their opinion the reduction applied by the County Board to the County Assessor's initial value of the Subject Property accounted for the negative neighborhood influences specific to the Subject Property discussed by the Taxpayer.
46. The Taxpayer did not present any information to allow the Commission to quantify the impact of the Subject Property's location on its value.
47. 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.

48. 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	\$ 14,400
<u>Improvements</u>	<u>\$470,070</u>
Total	\$484,470

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 2022.
7. This Decision and Order is effective on August 9, 2024.

Signed and Sealed: August 9, 2024



Steven A. Keetle, Commissioner