

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

KATHLEEN M. FOSTER,
APPELLANT,

CASE NO: 22R 0549

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CORRECTED DECISION
AND ORDER AFFIRMING
THE DECISION OF THE
DOUGLAS COUNTY BOARD
OF EQUALIZATION

This Corrected Decision and Order is issued to correct a typographical error in Section IV of the Commission’s July 31, 2024 Decision and Order.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2225564112.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$753,200 for tax year 2022.
3. Kathleen M. Foster (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 \$715,540 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 21, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert Peterson, attorney, was present at the hearing for the Taxpayer.

8. Michael Lunkwitz 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

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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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 3,740 square foot two story residence constructed in 2007. The Subject Property has quality and condition ratings of good.
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 and was last reappraised in 2019.
19. The Taxpayer alleges that the value of the Subject Property should be the value set by a March 1, 2021, district court decree.

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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).

20. The Nebraska Supreme Court has held that a decree fixing the value of property under a prior assessment is immaterial and not admissible to prove value under a subsequent assessment.⁹
21. The District Court decree sets a value for the Subject Property as of March 1, 2021, while the Commission is tasked with determining the value of the Subject Property as of January 1, 2022.
22. The District Court decree states that it arrived at its determination of value by averaging the opinions of value of two different appraisals.
23. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁰ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹¹ The District Court's determination of value for purposes of its decree was determined by averaging assessed values of other properties. The District Court'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.
24. Additionally, only one of the two appraisals relied on by the District Court was presented to the Commission to review, the appraisal with the higher opinion of value was not presented.
25. The Taxpayer alleges that the value of the Subject Property should be the value determined in an appraisal report.
26. The Taxpayer provided a copy of an appraisal report for the Subject Property prepared in accordance with the Uniform Standards of Appraisal Practice (the Appraisal Report).

⁹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988) (citing *DeVore v. Board of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944)); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

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

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

27. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹²
28. The Appraisal Report however gives an opinion of value of the Subject Property as of July 15, 2020, while the tax year at issue is 2022.
29. The Appraisal report contains descriptions, photographs, and a sketch of the Subject Property as of July 15, 2020.
30. Only one of the three sales considered in the sales comparison approach to value contained in the Appraisal Report occurred within two years of the assessment date.
31. The qualified sales that occurred in the economic area of the Subject Property show increasing sales prices on a per square foot basis the nearer to the assessment date the sale occurred.
32. The County Appraisers stated that based on sales in the market area it was determined by the County Assessor's office that assessed values in the Subject Property's market area were under market value for tax year 2022 and the entire market area reassessed.
33. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹³
34. No information was provided to relate the Appraisal Report's determination of value to the assessment date at issue in this appeal and therefore limits the weight the Commission gives the Appraisal Report when determining value for tax year 2022.
35. The Taxpayer alleged that the value increase from the prior assessment is unreasonable or arbitrary.
36. The assessed value for real property may be different from year to year according to the circumstances.¹⁴ For this reason, a prior

¹² *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

¹³ Neb. Rev. Stat §77-1301(Reissue 2018)

¹⁴ *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.¹⁵

37. The Taxpayer argued that the assessment of the Subject Property does not comply with Nebraska statute.
38. The Taxpayer alleged that Neb. Rev. Stat. §13-518 and §13-519 limit the allowable increase in valuation for the Subject Property from the prior assessed value.
39. Neb. Rev. Stat. §13-518 and §13-519 are contained within a section of the Statutes relating to budget limitations for certain political subdivisions with authority to levy property tax or authority to request levy authority.¹⁶
40. The definition of "allowable growth" limitations contained in these sections of statute is based on the valuation of real property but concerns the budgets of political subdivisions. It does not contain any language that would restrict the determination of assessed values of real property.
41. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷
42. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and

¹⁵ *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).

¹⁶ See, Neb. Rev. Stat. §13-518 et seq (Reissue 2022)

¹⁷ Neb. Rev. Stat. § 77-201(1)-(3) (Reissue 2022).

restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.¹⁸

43. As previously stated, the Nebraska Supreme Court has held that assessed value for real property may be different from year to year according to the circumstances.¹⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.²⁰

44. The valuation of real property in Nebraska is not controlled or limited by Neb. Rev. Stat. §13-518 et. seq. (Reissue 2022).

45. 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.

46. 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	\$ 76,700
<u>Improvements</u>	<u>\$638,840</u>
Total	\$715,540

¹⁸ Neb. Rev. Stat. § 77-112 (Reissue 2022).
¹⁹ *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).
²⁰ *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).

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 July 31,2024.

Signed and Sealed: August 12, 2024



Steven A. Keetle, Commissioner