

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

PHILLIP L. BROWN,
APPELLANT,

CASE NO: 22R 0628

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 2225562070.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$457,700 for tax year 2022.
3. Phillip L. Brown (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 \$457,700 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 May 24, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Phillip Brown was present at the hearing for the Taxpayer.
8. Scott Barnes 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
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 2,562 square foot two story residence constructed in 1987. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the use of recent sales in the valuation process results in an overvaluation of unsold properties like the Subject Property.
18. In Nebraska "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 Neb. Rev. Stat. §77-1371, (2) income approach, and (3) cost approach."⁹
19. 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 characteristics of residential properties in the area, including the Subject Property.
20. The PRF shows that there was a reappraisal of the market area in which the Subject Property is located for the 2022 assessment year.

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

21. The Taxpayer presented information from the County Assessor's web site of a recently sold property at 20825 Timberline Dr. that the Taxpayer alleged increased the assessed value of the Subject Property.
22. The Taxpayer alleged that the property at 20825 Timberline Dr. had undergone significant remodeling prior to the sale and would not be comparable to the Subject Property for assessment purposes.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
24. "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."¹¹
25. The Taxpayer did not present the PRF for property at 20825 Timberline Dr., accordingly, the Commission cannot see the basis for the determination of assessed value for the property or compare its 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.¹²
26. From the information presented however the property at 20825 Timberline Dr. is a ranch style property while the Subject Property is a two-story and the property at 20825 Timberline has a condition rating of very good while the Subject Property is

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on April 11, 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.*

average along with other differences in characteristics and amenities.

27. The County Appraisers stated that because the property at 20825 Timberline was a different style of construction and different condition rating than the Subject Property it would not be used as a comparable for determining the assessed value of the Subject Property.
28. The Commission finds that the information presented reflects the difference in condition between the Subject Property and 20825 Timberline discussed by the Taxpayer.
29. The Taxpayer has not presented information to demonstrate that the use of recent sales in the valuation process results in an overvaluation of unsold properties like the Subject Property.
30. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with another comparable property.
31. The Taxpayer presented information from the County Assessor's web site of a recently sold property at 20820 Roundup Rd. that the Taxpayer alleged was comparable to the Subject Property but was assessed at a lower per square foot value than the Subject Property, even with a second building on the property.
32. The Taxpayer did not present the PRF for property at 20820 Roundup Rd., accordingly, the Commission cannot see the basis for the determination of assessed value for the property or compare its 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.¹³
33. The County Appraisers stated that information presented regarding the property at 20820 Roundup Rd. supported the assessment of the Subject Property. The County Appraisers

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stated that the property at 20820 Roundup Rd. had the same style, quality, and condition but it was over 1,200 square feet larger which would result in a lower value per square foot due to economies of scale.

34. Professionally accepted appraisal principles hold that generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.¹⁴
35. 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.
36. 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	\$ 63,200
<u>Improvements</u>	<u>\$394,500</u>
Total	\$457,700

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.

¹⁴ See, Appraisal Institute, The Appraisal of Real Estate at 198 (14th ed. 2013)

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 31, 2024.

Signed and Sealed: May 31, 2024



Steven A. Keetle, Commissioner