

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

LAWRENCE F. SHACKMAN,
APPELLANT,

CASE NO: 22R 0845

V.

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

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 0844451000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$372,900 for tax year 2022.
3. Lawrence F. Shackman (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 \$372,900 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 July 20, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Lawrence F. Shackman was present at the hearing for the Taxpayer.
8. Scott Barnes, James G. Morris, 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 2,164 square foot ranch style residence constructed in 1983. The Subject Property has quality and condition ratings of average.
17. The Taxpayer alleged that the percentage increase in assessed value, particularly as compared to other nearby properties, was unreasonable or arbitrary.
18. 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.
19. The County Appraisers stated that it was determined by the County Assessor's office that values in the Subject Property's market area were undervalued and the entire market area reassessed for tax year 2022.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's

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).

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 County Appraisers stated that when a market area is reappraised percentage adjustments are not applied, rather properties characteristics are reviewed and values are redetermined based on characteristics, amenities, and the market for the current tax year.
23. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
24. The taxpayer requested a total assessed value based on an average per square foot assessed value of properties sold in the same zip code as the Subject Property in 2021 and 2022.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
26. “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.”¹⁴
27. The Taxpayer presented spreadsheets with information regarding properties in the same zip code as the Subject Property.
28. 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,

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

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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

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.

29. Additionally, averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.¹⁷
30. The Spreadsheets presented by the Taxpayer do not contain information regarding quality or condition of the properties listed and does not list amenities such as basement square footage, finished basement area, garages, etc.
31. The County Appraisers presented a list of all of the qualified sales used in the valuation of the Subject Property that were in the same market area and sold between October of 2019 and September of 2021.
32. The County Board presented a map of the Subject Property's market area.
33. The County Appraisers stated that the market area determinations were made based on sales and similar market influences.
34. The County Appraisers stated that sales from other market areas would not be comparable to sales from the Subject Property's market area due to different market factors.
35. The County Appraisers stated that the median per square foot sales price of ranch style properties in the same market area and with the same quality and condition ratings as the Subject Property was \$175 per square foot and the assessed value of the Subject Property was \$172 per square foot.

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

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

36. The assessed values of the properties in the same market area as the Subject Property that were on the Taxpayer's table show that the per square foot assessed value of the Subject Property is lower than the average assessed value per square foot.
37. None of the Sales from the Subject Property's market area are on the Taxpayer's sold property spreadsheets.
38. The information presented supports the market area determinations made by the County Assessor's Office for determining assessed values.
39. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
40. 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.
41. 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	\$ 58,300
<u>Improvements</u>	<u>\$314,600</u>
Total	\$372,900

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 10, 2024.

Signed and Sealed: July 10, 2024



Steven A. Keetle, Commissioner