

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

JANEEN L. MACRINO,
APPELLANT,

CASE NO: 22R 0910

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 0643912526.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$412,100 for tax year 2022.
3. Janeen L. Macrino (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 \$412,100 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 June 15, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Janeen Macrino and Richard Gregg was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) was 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 2,180 square foot condo constructed in 1985. The Subject Property has a quality and condition rating 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 Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
19. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
20. "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."¹⁰

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

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

21. The Taxpayer presented a list of seven properties in the same condominium regime as the Subject Property and requested an assessed value based on the average of the assessed value of these properties.
22. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹¹ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹² 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.
23. Additionally, averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.¹³
24. The Taxpayer presented the PRF for two of the properties on the comparable properties list.
25. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
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."¹⁵
27. A review of the PRF of the Subject Property and the two other properties presented shows that the differences in their

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

¹² Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹³ See, e.g. Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁵ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

assessments are due to characteristics and features of the properties.

28. The Subject Property has the highest assessed value in large part due to the fact that it has a larger basement than the other two properties presented and over twice as much basement finish as either of the other two properties.
29. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
30. The Taxpayer alleged that the condition rating of the Subject Property was incorrect.
31. The Taxpayer discussed the condition of the interior of the Subject Property and in particular water damage to the finish in the basement and garage.
32. The County Appraiser stated that after reviewing the information presented regarding the condition of the Subject Property his opinion of the condition rating of the Subject Property would be average rather than good. The County Appraiser stated that the change in the condition rating would increase the physical depreciation applied to the Subject Property, but he was unable to determine by how much.
33. Depreciation applied to the improvements in the assessment model used to value the Subject Property and the two other properties in the same market area are based on age and condition.
34. One of the properties before the commission has a condition rating of average but it is four years newer than the Subject Property and has an applied physical depreciation of 23.51% while the Subject Property has an applied physical depreciation of 20.37%.
35. Based on the information before it the Commission finds that the physical depreciation applied to the assessment of the Subject Property due to its age and condition would be no less

than 23.51% which would result in an assessed value for the improvements of \$391,700.¹⁶

36. The Commission finds based on the information presented that the assessed value of the Subject Property for tax year 2022 is \$396,000, with \$4,300 allocated to the land component and \$391,700 allocated to the improvements.
37. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
38. The Taxpayer has 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 vacated and reversed.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 4,300
<u>Improvements</u>	<u>\$391,700</u>
Total	\$396,000
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.

¹⁶ \$609,282 (Base, HVAC, and Add-on value) - \$143,242 (23.51% physical depreciation) = \$466,040 x 0.8405 NBHD Adj = \$391,700 (rounded)

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 June 28, 2024.

Signed and Sealed: June 28, 2024



Steven A. Keetle, Commissioner