

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

18735 F ST LLC,
APPELLANT,

CASE NO: 22R 0922

V.

DECISION AND ORDER
REVERSING 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 2328740306.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$816,600 for tax year 2022.
3. 18735 F St LLC (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 \$816,600 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 March 9, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Taylor Olberding and Heather Johnson were 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 1,748 ranch-style residence, detached garage, and an 8,640 square foot outbuilding constructed in 1994.
17. The Taxpayer alleged that the increase in assessed value from the prior assessment 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 characteristics of residential properties in the area, including the Subject Property, for each of the tax years on appeal.
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 having last been reviewed in 2017.
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 Taxpayer purchased the Subject Property for \$740,000 in September of 2021 and alleged that the Subject Property should be lowered to \$695,600 or 94% of the purchase price.
23. All real property, other than agricultural land and horticultural land and qualified historical property, shall be valued at 100% of its actual value.¹³
24. “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.”¹⁴
25. “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.”¹⁵ “Pursuant to § 77-112, the statutory measure of actual value is not what an individual

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, Neb. Rev. Stat §77-201 (2022 Cum. Supp.), Title 350 Neb. Admin. Code, ch. 10 §003.01A (10/14).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2018)

¹⁵ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁶

26. The sale of the Subject Property was not contained in the County Board’s list of qualified sales that occurred in the economic area of the Subject Property.
27. The County Appraisers stated that the sale of the Subject Property was not considered an arms-length transaction as it was not listed for sale on the open market and the Assessor’s office contacted the seller who indicated that the sale was between friends.
28. The Taxpayers acknowledged that they purchased the Subject Property from a friend.
29. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
30. The Taxpayer presented a table showing information about four other properties located near the Subject Property.
31. The Taxpayer presented the PRF for three of these properties and the information from the Assessor’s web site regarding the fourth property.
32. The PRFs and web site information show that the differences in value between the Subject Property and the properties presented by the Taxpayer are due to differences in their characteristics and amenities such as age, style, quality, condition, garages, outbuildings, basement finish, and swimming pools.
33. The Subject Property for example is a ranch style residence which, when compared to the other properties presented by the Taxpayer, has the second largest attached garage, a large, detached garage, the largest outbuilding, and a swimming pool.
34. Three of the other properties are two story properties and the fourth is a log cabin style residence.

¹⁶ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

35. The Taxpayer has not demonstrated that the assessed value of the Subject Property is not equalized with other comparable properties.
36. The Taxpayer's allege that the value of the land component of the Subject Property should be reduced due to a power line easement running on the west side of the property.
37. The County Appraisers stated that there was no difference in sales information for properties in the size range of the Subject Property that had an easement and those that did not.
38. The PRFs presented show that the County Assessor values the land components uniformly whether they have an easement or not.
39. The Taxpayer did not present information to allow the Commission to quantify the impact of the easement on the value of the land component of the Subject Property.
40. The Taxpayer presented an appraisal report determining the value of the Subject Property as \$756,000 as of June 29, 2021, approximately six months prior to the assessment date.
41. The appraisal report was performed in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
42. 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.¹⁷
43. The appraisal report indicates that its determination of value for the Subject Property relied primarily on the sales comparison approach to value.
44. The County Appraisers stated that they did not believe that the sales used in the appraisal report were the most comparable to the Subject Property and opined that the sales contained in the County Board's list of qualified sales that occurred in the

¹⁷ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

economic area of the Subject Property were closer to the Subject Property and a better indicator of value.

45. Based on all of the information presented the Commission finds that the actual value of the Subject Property as of the assessment date is \$756,000, as indicated by the appraisal report presented by the Taxpayer.
46. 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.
47. 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.

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:
\$756,000.
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.
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 April 10, 2024.

Signed and Sealed: April 10, 2024



Steven A. Keetle, Commissioner