

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

MICHAEL E. MITCHELL
APPELLANT,

CASE NO: 23A 0437

V.

DAKOTA COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Dakota County, parcel number 220180644.
2. The Dakota County Assessor (the County Assessor) assessed the Subject Property at \$690,090 for tax year 2023.
3. Michael E. Mitchell (the Taxpayer) protested this value to the Dakota County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$690,090 for tax year 2023.
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 25, 2024, at Divots Conference Center, 4200 W Norfolk Ave, Norfolk, NE, before Commissioner Jackie Russell
7. Mike Mitchell was present at the hearing for the Taxpayer.
8. Sam Ferraro (Appraiser), Christy Abts (Assessor), and Melissa Collins 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 two-story, single family residential home, built in 1955 with 3,056 square feet (SF) above grade, unfinished basement area of 988 SF, nine plumbing fixtures, a quality rating of average (3) and a condition rating of good (4). The parcel also has several additional outbuildings and grain bins listed on the property record file (PRF) submitted by the County.
17. The Appraiser is a Nebraska Certified Residential appraiser that was hired by the County Board to act as a protest referee.
18. The Taxpayer stated that the location of the property is a drawback to value and that there are no true comparable properties for analysis due to differences.
19. The Taxpayer stated that the Subject Property is located on the far end of the power grid and therefore, struggles for services in the county including electricity, internet, and cell services.
20. The Taxpayer stated that the Subject Property is located in an area prone to flooding.
21. The Appraiser stated that the Subject Property location is at the edge of the county's power grid and there may have been times when water caused issue, but the county does not have enough market data to quantify an adjustment for flood or power grid issues.

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).

22. The Taxpayer stated that the values of the 2014 grain bins are now higher than his purchase prices and feels that is unreasonable. The Taxpayer submitted a copy of the 2013 and 2014 grain bin invoices detailing the purchase prices as \$82,828.56 and \$87,007.60 respectively.
23. The Assessor attested that the 2014 grain bins were found during the 2020 review, added to the property record data for value beginning in 2021, and there was not a property improvement statement or permit filed by the owner for the construction of either bin.
24. The Assessor did not invoke authority regarding omitted real property for the value of the grain bins discovered in 2020.⁹
25. The Assessor stated that the costing tables and depreciation tables for the Computer Automated Mass Appraisal system (CAMA) were updated for 2023. This included an increase to the contributory values used in the cost approach to better comply with direct costs, and depreciation factors based on market sales analysis.
26. The Subject PRF on page 4 shows that replacement cost (RCN) of the 2014 grain bins, is \$101,080 each after a locational modifier of \$9,005 was applied to the unit cost of \$92,075. The depreciation table is then set at a 10% physical adjustment based on the age of the structure, resulting in a replacement cost new less depreciation (RCNLD) of \$90,970 rounded.
27. The Assessor stated there was a revaluation conducted to the subject property neighborhood for 2023. As such, the result will be varying degrees of percentage increases (or decreases) to each property in the market study area dependent upon the property components and comparable sales within their study period.
28. The Appraiser submitted PRFs for three properties used in the sales analysis of the Subject Property. The Appraiser stated that comparing the properties submitted, utilizing generally

⁹ Neb. Rev. Stat. § 77-1317 (Reissue 2018)

- accepted mass appraisal practices for a sales comparison analysis places the Subject Property in line with the sales.
29. The Taxpayer has produced competent evidence of the 2014 cost of the addition of two grain bins to the property.
 30. 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.
 31. 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 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 23,550
<u>Improvements</u>	<u>\$671,715</u>
Total	\$695,265
3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 2023.
7. This Decision and Order is effective on July 17, 2024.

Signed and Sealed: July 17, 2024



Jackie S. Russell, Commissioner