

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

ANDREW SHIERS
APPELLANT,

CASE NO: 23R 0112

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE BOX BUTTE
COUNTY BOARD OF
EQUALIZATION

BOX BUTTE COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is a parcel improved with a single-family residence in Alliance, Box Butte County, parcel number 070032610.
2. The Box Butte County Assessor (the County Assessor) assessed the Subject Property at \$159,950 for tax year 2023.
3. Andrew Shiers (the Taxpayer) protested this value to the Box Butte County Board of Equalization (the County Board) and requested an assessed value of \$140,938 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$159,835 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 5, 2024, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner James D. Kuhn.
7. Andrew Shiers was present at the hearing for the Taxpayer.
8. Michelle Robinson (the Assessor) 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

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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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 Taxpayer questioned how the Subject Property formerly had a condition ranking of Badly Worn but is now considered Average. The Taxpayer questioned how quality and condition were determined. The employees of the Assessor's office were unable to substantially answer his questions.
17. The Subject Property is a 1,064 square foot home with a "fair" quality and an "average" condition. The Taxpayer provided two comparable properties similar to the Subject Property. 1412 E 1st Street (1412 1st) is a 1,064 square foot home with a "fair+" quality and an "average+" condition. 1106 Meadowlark Avenue (1106 Meadowlark) is a 1,512 square foot home with a "fair+" quality and an "average+" condition. The Taxpayer calculated a price per square foot for all three of the properties and found the Subject Property had a higher price per square foot than either comparable property.
18. The Assessor stated she does not value properties on a price per square foot method, instead using the cost approach. Under § 77-112, actual value of real property for purposes of taxation

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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).

may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.

19. The Assessor stated a questionnaire was sent to property owners for the revaluation of residential property for the 2023 tax year. The Assessor asserted that the owner's information provided on the questionnaire lead to the adjustment of the Subject Property's condition ranking from badly worn to average.
20. The Assessor attested an increase to land values was also implemented for the 2023 tax year after the assessor's land value study.
21. The Commission analyzed the Subject Property and the Taxpayer's comparable properties. The Subject Property is a 13,570 square foot lot with a 1,064 square foot house built in 1997. It has 616 square feet of finished basement and a 24'x26' attached garage built in 2020. 1412 1st is a 9,000 square foot lot with a 1,064 square foot house built in 1998. It does not have any finished basement, but it does have a 24'x20' attached garage built in 2001. 1106 Meadowlark is a 14,202 square foot lot with a 1,512 square foot house built in 1996. It has 1,512 square feet of finished basement and a 28'x22' attached garage, year unknown.
22. The Taxpayer stated that 1106 Meadowlark was the best and closest comparable. The Commission notes that 1106 Meadowlark is nearly 500 square feet larger than the Subject Property with almost triple the amount of finished basement. The Commission determined that 1106 Meadowlark was not a good comparable.

23. The Commission found 1412 1st to be most comparable with the Subject Property. Both have the same square footage and similar year built. The Subject Property has 616 square feet of basement finish whereas 1412 1st has none. The Subject Property's newer attached garage will have less depreciation than 1412 1st's attached garage.
24. The Taxpayer provided comparable properties with a price per square foot analysis. The Taxpayer did not make any adjustments for differences between the Subject Property and the comparable properties to make them more similar. Without value adjustments, specific component contributory values that make up a property's valuation are ignored.
25. 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.
26. 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	\$13,570
<u>Improvements</u>	<u>\$142,265</u>
Total	\$159,835

3. This Decision and Order, if no further action is taken, shall be certified to the Box Butte County Treasurer and the Box Butte

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 January 30, 2025.

Signed and Sealed: January 30, 2025



James D. Kuhn, Commissioner