

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

STEPHEN M. KALHORN  
APPELLANT,

CASE NO: 23R 0222

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 0930340000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$526,000 for tax year 2023.
3. Stephen M. Kalhorn (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 \$526,000 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 July 23, 2024 at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Stephen Kalhorn was present at the hearing for the Taxpayer.
8. James Morris (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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a single family, raised ranch style residential home built in 1964 with 2,322 square feet (SF) above grade, walkout basement area of 2,322 SF with 1,500 SF full finish, 2.5 baths, a basement double stall garage, covered wood deck of 438 SF, concrete patio of 200 SF, a quality rating of good, and a condition rating of average.
17. The Taxpayer argued that the 43% increase to the Subject Property was not equalized with comparable properties, there has been no improvements to the property since the purchase date in 2003, and there are water issues in the basement due to the proximity of George's Lake.
18. The Taxpayer opined that basement finish value is arbitrary because the Assessor's office does not accurately list all houses with basement finish.
19. "Reliable cost data are imperative in any successful application of the cost approach. The data must be complete, typical, and current. Current construction costs should be based on the cost of replacing a structure with one of equal utility, using current materials, design, and building standards."<sup>9</sup>
20. The Appraiser stated that the Assessor's office makes every effort to accurately describe the data features of a property but

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

cannot account for homeowners that do not give accurate data descriptions to their office.

21. The Taxpayer provided four Property Record Files (PRF) for analysis in rebuttal of the Subject Property's value.
22. The Taxpayer provided two methodologies to help create an opinion of value of the Subject Property.
23. The Taxpayer's first method of value calculated an average percentage increase of the four properties submitted for analysis. The Taxpayer then applied the average percent increase to the 2022 value of the Subject Property for a value of \$433,532.
24. The Taxpayer's second methodology showed a calculated average price per square foot (PPSF) of the same comparable properties and applied the calculated PPSF amount to the Subject Property for a value of \$442,824.
25. The Taxpayer then opined to average the percentage increase model with the PPSF model for a total property value of \$442,824 for the Subject Property for 2023.
26. After the Commission's review of the PRFs submitted by the Taxpayer, there are components of contributory value that are not like the Subject Property, thus if the comparable property is inferior in some respect, the sale price is adjusted upward, just as if it is superior, it will be adjusted downward.<sup>10</sup>
27. The Taxpayer's methods are not identified in statute and no evidence of their professional acceptance as accepted mass appraisal methods has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
28. A determination of actual value may be made by using professionally accepted mass appraisal methods.<sup>11</sup> The methods

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<sup>10</sup> *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

<sup>11</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

- expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.<sup>12</sup>
29. The Appraiser attested that the Subject Property is valued using a depreciated cost approach reconciled with a sales comparison approach to value.
30. Under § 77-112, actual value of real property for purposes of taxation 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.<sup>13</sup>
31. The cost approach derives a value indication “by estimating the cost new as of the effective date of the appraisal to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive; deducting depreciation from the total cost; and adding the estimated land value.”<sup>14</sup>
32. “In the sales comparison approach, appraisers develop opinions of value by analyzing closed sales, pending sales, active listings, and cancelled or expired listings of properties that are similar to the property being appraised.”<sup>15</sup>
33. “Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”<sup>16</sup>
34. “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

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<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845, 906 N.W.2d 285, 295 (2018).

<sup>14</sup> *Cost Approach, The Dictionary of Real Estate Appraisal* (7th ed. 2022).

<sup>15</sup> Appraisal Institute, *The Appraisal of Real Estate* 351 (15th ed. 2020).

<sup>16</sup> Neb. Rev. Stat. § 77-1371 (Reissue 2018).

unknown value.” Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

35. The Taxpayer attested that the basement finish of the Subject Property is incorrectly measured and provided a total measurement of 989 SF to rebut the Assessor’s office total of 1,500 SF full finish.
36. Accordingly, the improvement value must be reduced by \$29,193 before physical depreciation is applied, or “NBHD” Adjustment is factored, to reflect a reduction in finished basement square footage from 1500 SF to 989 SF.<sup>17</sup> Using the figures found on page 7 of the PRF, a new value of \$446,600 would result for the improvement component of the Subject Property.
37. The Taxpayer attested that the garage area of the basement is larger than two car stalls.
38. The Appraiser attested that a physical inspection of the property did not take place prior to the hearing.
39. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
40. Clear and convincing evidence has been produced 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 2023 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

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<sup>17</sup> \$85,695 for 1,500 SF at \$57.13 per SF. 989 SF at \$57.13 would be \$56,502. \$85,695 - \$56,502 is \$29,193. Further resulting in Total Add-On Value (\$7,563 + \$7,837 + \$66,688 + \$56,502 + \$4,384 + \$23,652 + \$2,214) of \$168,840 and Physical Depreciation [(\$405,203 + \$5,178 + \$168,840) \* .2669] of \$154,594.

Land	\$ 56,900
<u>Improvements</u>	<u>\$446,600</u>
Total	\$503,500

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 2023.
7. This Decision and Order is effective on August 6, 2024.

Signed and Sealed: August 6, 2024



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Jackie S. Russell, Commissioner