

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

NITZEL & COMPANY
APPELLANT,

CASE NO: 23R 0226

V.

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

HALL COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Hall County, parcel number 400103141.
2. The Hall County Assessor (the County Assessor) assessed the Subject Property at \$97,650 for tax year 2023.
3. Nitzel & Company (the Taxpayer) protested this value to the Hall County Board of Equalization (the County Board) and requested an assessed value of \$73,650 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$90,079 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 November 3, 2023, at Administration Building, first floor, 121 S. Pine Street, Board Room, Grand Island, NE, before Commissioner James D. Kuhn.
7. Ron Nitzel was present at the hearing for the Taxpayer.
8. Kristi Wold (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
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 Taxpayer stated the Subject Property was purchased to "clean up the neighborhood" and is currently renting it out for \$650 per month.
17. The Taxpayer stated there are many issues with the condition of the Subject Property such as an old roof that needs replaced, needs painted, wood rot, no egress windows and has a sump pump due to a high-water table.
18. The Taxpayer stated his requested value would be \$78,217. The Taxpayer did not provide any Property Record Files (PRF) for comparable properties showing the Subject Property is being incorrectly valued or dis-equalized with similar properties.
19. The Assessor stated an inspection was done on the Subject Property. The Assessor stated the Subject Property has a detached garage that is being used by the Taxpayer and not being rented by the tenant. The tenant stated his rent was \$750 per month. The Assessor stated that she and the County Board of Equalization (BOE) agreed with the referee's recommendation to use the current rent and use a Gross Rent Multiplier to value the Subject Property using an income approach using actual rents from the Subject Property.

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).

20. 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.
21. 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	\$14,447
<u>Improvements</u>	<u>\$75,632</u>
Total	\$90,079

3. This Decision and Order, if no further action is taken, shall be certified to the Hall County Treasurer and the Hall 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 February 9, 2024.

Signed and Sealed: February 9, 2024



James D. Kuhn, Commissioner