

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

PAUL FRAZIER
APPELLANT,

CASE NO: 23R 0655

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 2145830592.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,525,700 for tax year 2023.
3. Paul Frazier (the Taxpayer) protested this values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$1,525,700 for tax year 2023.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 11, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Paul B. Frazier was present at the hearing for the Taxpayer.
8. Michael Lunkwitz (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 1.¹
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 custom built, one-story, single-family home, built in 2016 with 3,125 square feet (SF) above grade, walkout basement area of 3,558 SF with 2,440 SF full finish, three indoor fireplaces and one outdoor fireplace, four full baths and two half-baths, attached garage with 2,204 SF, quality rating of very good, and condition rating of good.
17. The Taxpayer alleged there is an equalization issue within the Subject Property neighborhood creating an arbitrary or unreasonable value for the Subject Property.
18. The Taxpayer provided Property Record Files (PRF) for six properties surrounding the Subject Property and provided a price per square foot (PPSF) analysis by calculating the total value divided by the above grade square footage for each of the comparable properties provided.
19. The County Assessor is responsible for setting property valuations for all real property in the county at actual value as of January 1, 2023.
20. A determination of actual value may be made by using professionally accepted mass appraisal methods.⁹ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁰

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

¹⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

21. 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.¹¹
22. When comparing physical characteristics of like properties, 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.¹²
23. The Commission finds through analysis of the PRFs submitted by the Taxpayer that the properties differ in data that constitute adjustments in a sales comparison approach to value. Differences such as style of construction, square footage, age, quality and/or condition, and number of bathroom fixtures. It should also be noted that none of the properties submitted for comparison have a recent sale price of an improved parcel to analyze current market actions amongst the properties.
24. The Taxpayer's opinion of value was determined by a PPSF comparison of the Subject Property to the provided neighboring properties without the use of adjustments to any differing physical characteristics prior to analysis. The Taxpayer's method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
25. The Appraiser attested that the Subject Property data was adjusted for 2023 to ensure correctness after conversation with the Taxpayer on February 9th, 2023, during the preliminary valuation process. This was also notated on page 4 of the provided PRF for the Subject Property.
26. The Appraiser attested that because of the age of the Subject Property, a cost approach to value is utilized as detailed on pages 6-7 on the PRF, using acceptable mass appraisal methods.

¹¹ Neb. Rev. Stat. § 77-1371 (Reissue 2018).

¹² *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

27. 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.
28. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions 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 years 2023 is:

Land	\$ 241,200
<u>Improvements</u>	<u>\$1,284,500</u>
Total	\$1,525,700

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 November 15, 2024.

Signed and Sealed: November 15, 2024



Jackie S. Russell, Commissioner