

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

MICHAEL W MILLER
APPELLANT,

CASE NO: 23R 1385

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 1144320639.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,149,600 for tax year 2023.
3. Michael W Miller (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 \$1,149,600 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 September 24, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Michael W. Miller was present at the hearing for the Taxpayer.
8. Kurt Skradis (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 1.5 story, single-family residential home built in 1999 with 5,098 square feet (SF) above grade, unfinished basement area of 3,408 SF, two fireplaces, five baths, attached garage with 871 SF, a screened porch with 246SF, quality rating of very good, and condition rating of average.
17. The Taxpayer stated that the Subject Property is not equalized with neighboring properties and therefore, the value is arbitrary or unreasonable.
18. The Taxpayer compiled exhibits A, B, and C, with information from properties located within the Subject Property neighborhood such as assessment value, percentage increase, lot size, home size, sales where applicable from June 9, 2014, to May 30, 2023, and a price per square foot analysis using the 2023 value divided by the home size for each.
19. The Taxpayer did not provide Property Record Files (PRF) of the properties included in the analysis for the Commission to verify comparability of each comparable property data to the Subject Property.⁹

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 For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 9, 2024 includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property*

20. Sales data from outside of the required sales roster dates of October 1, 2020, thru September 30, 2022¹⁰, are not considered recent sales in a sales comparison approach to value and therefore, not relevant to the assessment date of January 1, 2023.
21. “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 unknown value.” Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007). 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.¹¹
22. The Taxpayer stated there were no adjustments to the comparable properties prior to the price per square foot calculation. Adjustments to the valuations would need to be made to bring the property components closer to the Subject Property’s components and therefore, a price per square foot analysis as done by the Taxpayer does not meet professionally accepted mass appraisal practices¹² as required in the valuation process. The Commission gives this analysis little weight.
23. The Appraiser 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.

Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

¹⁰ 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

¹¹ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

¹² 350 Neb. Admin. Code, ch 12, § 002.12

24. The Appraiser attested that information was provided by the Taxpayer through email conversations and pictures and was used to correct data on file for the Subject Property. Data corrections included reducing the amount of basement finish from 830 SF to 0 SF, changing a solid wall porch classification to a screened in porch, changing the number of plumbing fixtures, and changing the type of roof cover.
25. After making data corrections to the Subject Property within the revaluation model, the Appraiser provided a new opinion of value of \$954,400 for the improvements and \$130,100 for the land, totaling \$1,084,500.
26. 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.
27. 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 reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 130,100
<u>Improvements</u>	<u>\$ 954,400</u>
Total	\$1,084,500

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 October 15, 2024.

Signed and Sealed: October 15, 2024



Jackie S. Russell, Commissioner