

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

ROMONAJO ENTERPRISES
LLC.
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20C 0137

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

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Douglas County, parcel number 611080004.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$535,600 for tax year 2020.
3. Romonajo Enterprises LLC., (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 \$535,600 for tax year 2020.
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 2, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Roger Nieman was present at the hearing for the Taxpayer.
8. Micaela Larsen and Christine Lytle with the County Assessor's Office (the County Appraisers) were 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 Subject Property is a bar & restaurant property located in Bennington, Nebraska.
17. The County Appraisers stated that the Subject Property is unique in that it is a split-level commercial parcel where the primary use is the lower level.
18. The County Appraisers presented the Property Record File (PRF) for the Subject Property and several other bar or restaurant properties in Douglas County. The PRFs show that these properties are valued using the cost approach to valuation for tax year 2020.
19. The Taxpayer alleges that the Subject Property should not be classified as a two-story building but rather as a one-story building with a finished basement.
20. The Taxpayer presented photographs of the Subject Property which show that upon entering the front door of the building there is a landing with a half flight of stairs leading down to the main dining room and a half flight of stairs leading to the banquet and reception hall.

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).

21. The photographs show that the main door is on the west end of the Subject Property and that ground level becomes higher the farther east one goes along the front of the Subject Property.
22. The County Appraiser stated that if the Subject Property were to be valued as a one-story building with a basement the basement would need to be valued as class C basement finished space. The County Appraiser discussed the per square foot costs that would be appropriate for a basement and opined that \$77 per square foot would be a reasonable value to use to account for the characteristics of the Subject Property in the cost approach.
23. If the Subject Property were valued as a one-story building with the square footage of the first floor and basement each at 5,280 as shown on the sketch of the Subject Property contained in the PRF would change the total assessed value of the Subject Property to \$467,977.⁹
24. The Commission finds, based on the information and statements provided at the hearing, that the Subject Property should be valued as a one-story building with a finished basement for tax year 2020.
25. The Commission finds that the value of the Subject Property for tax year 2020 is \$467,977.
26. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
27. The Taxpayer has 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 vacated.

⁹ 5,280 sq ft x 105.44psf =	\$556,723
Add on Canopy	\$ 10,000
Add on utility bldg.	\$ 8,000
Basement 5,280 sq. ft x \$77psf =	\$406,560
55.00% Phys Depreciation	(\$539,706)
RCNLD	\$441,577
Land	\$ 26,400
Total Value	\$467,977

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 2020 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 26,400
<u>Improvements</u>	<u>\$114,577</u>
Total	\$467,977

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 2020.
7. This Decision and Order is effective on February 15, 2023.

Signed and Sealed: February 15, 2023



Steven A. Keetle, Commissioner