

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

BRETT D. KLUG
APPELLANT,

CASE NO: 20C 0273

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 is an improved commercial parcel in Douglas County, parcel number 1800108367.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$799,700 for tax year 2020.
3. Brett D. Klug (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 \$799,700 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. Brett Klug was present at the hearing for the Taxpayer.
8. Keith Nielsen with the County Assessor's Office (the County 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 28,626 square foot parcel improved with a 9,215 square foot industrial flex mall building.
17. The Taxpayer alleged that the value of the Subject Property should be reduced due to deferred maintenance items that need to be remedied.
18. The Taxpayer alleged that the roof of the Subject Property is worn out and needs to be replaced and that the parking lot needs to be resurfaced.
19. The Taxpayer presented a proposal for the resurfacing of the parking lot of the Subject Property. The Taxpayer also offered an estimate for the replacement of the roof of the Subject Property.
20. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF shows that the Subject Property was valued using the income approach to value.
21. The County Appraiser stated that industrial flex mall buildings are valued using different income approach models depending on their quality and condition.
22. The County Appraiser stated that the condition of the roof and parking lots were factors in determining condition rating of a property but that the condition of the rest of the building and other improvements on a property were also factors to be

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).

considered when determining the condition rating of the Subject Property.

23. The County Appraiser stated that roof replacement and parking lot resurfacing were not annual expenses but rather long-term expenses that would typically be capitalized over a number of years. The County Appraiser stated that these long-term expenses were accounted for in the expense ratio of the industrial flex mall buildings valuation model.
24. The County Appraiser presented the PRF for other commercial industrial flex mall buildings that showed buildings with the same quality and condition rating as the Subject Property were valued using the same rental rate, vacancy and collection loss rate, expense rate, and capitalization rates.
25. The County Appraiser stated that he has inspected the interior and exterior of the Subject Property and the properties presented.
26. The County Appraiser stated that the maintenance items that the Taxpayer presented, when considered along with his inspection of the Subject Property, would not change his opinion of the quality or condition rating of the Subject Property.
27. The Taxpayer has not offered evidence to show that the County's determination of the condition rating of the Subject Property for valuation purposes was unreasonable, arbitrary, or incorrect.
28. The Taxpayer offered information regarding the recent sale of an industrial flex mall building that was sold for an amount greater than its assessed value.
29. The Taxpayer did not offer the PRF for this property. The information that was presented from the Assessor's web site shows that the sold property had a much lower condition rating than the Subject Property.
30. The County Board offered a listing of all recent industrial flex mall buildings to support its valuation models.
31. The County Appraiser stated that all buildings are valued using the same model and that when considering all of the recent sales

the valuations determined by the model were supported by the overall market sales.

32. The Taxpayer has not shown that the Subject Property is not assessed uniformly or proportionally with other comparable properties.
33. 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.
34. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$267,900
<u>Improvements</u>	<u>\$531,800</u>
Total	\$799,700
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 2020.
7. This Decision and Order is effective on February 15, 2023.

Signed and Sealed: February 15, 2023



Steven A. Keetle, Commissioner