

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

KATAHDIN ENTERPRISES
LLC
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20C 0459

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 622250002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$203,300 for tax year 2020.
3. Katahdin 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 \$203,300 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 June 7, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Michael Bosse was present at the hearing for the Taxpayer.
8. Micaela Larsen 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 commercial parcel which contains an 1,800 square foot bar/tavern with a full basement and an off-street parking lot located on a two-lane section of Maple Street, a major east-west road in the city of Omaha.
17. The Taxpayer alleged that the assessed value of the Subject Property should not have increased from the prior year's assessment.
18. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
20. The Taxpayer alleged that street construction in the area and the installation of a median in Maple Street adjacent to the western end of the Subject Property reduced the value of the Subject Property due to reduced access.
21. The County Appraiser stated that the street construction in the area was completed prior to the assessment date.

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 *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁰ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹¹ Neb. Rev. Stat §77-1301(Reissue 2018)

22. The Taxpayer did not present information to allow the Commission to analyze the impact of the street median on the value of the Subject Property.
23. The Taxpayer presented an appraisal report which included the Subject Property, as well as two adjacent parcels for purposes of mortgage lending (the Appraisal Report). The Appraisal Report contains two different determinations of value based on different conditions and two different dates approximately a year to a year and a half prior to the assessment date.
24. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹²
25. The County Board presented the PRF for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
26. The PRF for the Subject Property indicates that the Subject Property was split from other parcel(s) and was made a separate parcel in tax year 2019.
27. The PRF for the Subject Property indicates that the market area in which the Subject Property is located was reappraised for tax year 2020.
28. The Appraisal Report does not value the Subject Property individually, but rather as part of a whole, including two other parcels with retail and industrial square footage.
29. The Appraisal Report indicates that a cost to repair the roof and water damage that was present is included in its determination of value but does not allocate those costs between the parcels appraised.

¹² *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

30. The photographs and descriptions in the Appraisal Report of the Subject Property and the other parcels appraised indicate that the Subject Property has the least damage and is in the best condition of the three parcels.
31. The Commission finds that the Appraisal Report does not contain sufficient information to demonstrate the value of the Subject Property separate from the other included parcels as of the assessment date and therefore gives it little weight.
32. The County Board presented the PRF for the two additional parcels included in the Appraisal Report.
33. The County Board presented a list of Bar-Tavern sales that to support its determination of value for the Subject Property.
34. 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.
35. 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 | \$ 81,000 |
| <u>Improvements</u> | <u>\$122,300</u> |
| Total | \$203,300 |

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 July 14, 2023.

Signed and Sealed: July 14, 2023



Steven A. Keetle, Commissioner