

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

DOUGLAS A. KRUSSEL  
APPELLANT,

CASE NO: 20R 0323

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 residential parcel in Douglas County, parcel number 2132140570.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$415,000 for tax year 2020.
3. Douglas A. Krussel (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 \$396,800 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 January 11, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Doug Krussel was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer alleged that the assessed value of the Subject Property has increased excessively since its 2015 remodel.
17. The County Board presented the Property Record File (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.
18. The valuation history of the Subject Property shows that since 2016 its value has changed due to reappraisal by the County Assessor and action by the County Board, sometimes significantly and even in the same tax year.
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>9</sup>
20. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>10</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>11</sup>

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> Neb. Rev. Stat. § 77-1301 (Reissue 2018)

<sup>10</sup> See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>11</sup> See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

21. The Taxpayer alleged that the value of the Subject Property should be reduced due to the small size of the garage.
22. The County Appraisers stated that Subject Property is an unusual property in that it was completely remodeled prior to 2016. The account notes in the PRF indicate that it had been a split entry home that was taken down to the foundation and rebuilt as a two-story home.
23. The PRF shows that the size of the garage is factored into the assessed value calculation.
24. The County Appraisers stated that the PRF lists basement finish as a characteristic but that there is no finished basement in the Subject Property. The County Appraisers further stated that the decision of the County Board to reduce the value of the Subject Property was based on the removal of this basement finish, and that the determination of the County Board reflected the actual value of the Subject Property.
25. The Taxpayer alleged that recent sales demonstrated that the assessed value of the Subject Property was higher than actual value.
26. The Taxpayer discussed the recent sale of a property near the Subject Property (the Sold Parcel).
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
28. “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.”<sup>13</sup>
29. The Taxpayer did not present the PRFs for the properties listed on the table of assessed values. Accordingly, the Commission cannot see the basis for the determination of assessed value for

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<sup>12</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>13</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.<sup>14</sup>

30. The County Appraisers stated that the Sold Parcel discussed by the Taxpayer was a split-level property, a different style of construction, as well as a lower quality of construction and lower condition than the Subject Property.
31. The Commission cannot find that the Sold Parcel presented by the Taxpayer is comparable to the Subject Property.
32. The County Board presented a list of recently sold properties to support the assessed value of the Subject Property.
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 | \$ 34,400 |
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<sup>14</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 19, 2021, 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 Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

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|---------------------|------------------|
| <u>Improvements</u> | <u>\$362,400</u> |
| Total               | \$396,800        |

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 May 17, 2023.

Signed and Sealed: May 17, 2023



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Steven A. Keetle, Commissioner