

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

SHAWN T. KOLTERMAN
APPELLANT,

CASE NO: 20R 0473

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 710390000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$436,200 for tax year 2020.
3. Shawn T. Kolterman (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 \$436,200 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 August 24, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Shawn Kolterman was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis 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
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 Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the fireplaces.
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 PRF shows that the Subject Property has three fireplaces, one single story fireplace and two fireplaces with three story chimneys.
19. The Taxpayer stated that the Subject Property did have three fireplaces but that only one was useable as a wood burning fireplace as one was blocked up and another had a gas insert.
20. The County Appraiser stated that the valuation model was based on the cost to construct the fireplaces, chimneys and associated flues and vents. The County Appraiser stated that because these items were still present their contributory value was added whether they were used or not as they could be reopened and used.

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 Taxpayer further alleged that the build date for the Subject Property shown on the PRF was incorrect.
22. The Taxpayer stated that he had done research into the construction of the Subject Property and had seen pictures of the completed structure from 1910, indicating that it was older than the 1922 date of build shown on the PRF.
23. The County Appraisers stated that a change in the build date from 1922 to 1910 could increase the depreciation by 2 to 3 percent in the valuation model used for the 2020 tax year.
24. The Commission finds that the depreciation applied to the improvements on the Subject Property should be increased by 3 percent resulting in an assessed value for the improvements of \$409,500.⁹
25. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the value of other comparable properties.
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
27. “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.”¹¹
28. The Taxpayer presented a table showing the address, assessed value, square footage, age, quality, and condition of other properties located near the Subject Property.
29. The Taxpayer did not present the PRFs for these other properties presented. Accordingly, the Commission cannot see the basis for the determination of assessed value for the

⁹ \$621,578 (base value) + \$9,111 (HVAC Adj) + \$126,379 (add on value) = \$757,068 – 301,313 (39.8% physical depreciation) = \$455,755 x 1.0696 NBHD Adj = \$487,477 x .84 (quality Adj) = \$409,479 rounded to \$409,500.

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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 such as garages, carriage houses, basement finish, fireplaces, etc., of the properties contained in the Taxpayers chart to the Subject Property.¹²

30. The Commission cannot find that the properties presented by the Taxpayer are comparable to the Subject Property.
31. The Taxpayer has not shown that the value of the Subject Property is not equalized with other properties.
32. The Commission finds that the value of the Subject Property for the 2020 tax year is \$415,900, with \$409,500 allocated to the improvements and \$6,400 to the land.
33. 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.
34. 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.

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:

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 8, 2022, 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.*

Land	\$ 6,400
<u>Improvements</u>	<u>\$409,500</u>
Total	\$415,900

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 August 9, 2023.

Signed and Sealed: August 9, 2023



Steven A. Keetle, Commissioner