

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

ERROL R. WAITS
APPELLANT,

CASE NOS: 20R 0488, &
21R 0757

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 2332605203.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$304,200 for tax year 2020 and \$334,100 for tax year 2021.
3. Errol R. Waits (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$304,200 for tax year 2020 and \$319,700 for tax year 2021.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 26, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Errol Waits 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 Subject Property is being assessed at a different amount per square foot than other similar property.
17. The Taxpayer alleged that because the valuation of the Subject Property had been changed by the Commission in a prior year that the valuations for the tax years currently before the Commission should be lowered.
18. A decree fixing the value of property under a prior assessment is immaterial and not admissible to prove value under a subsequent assessment.⁹
19. The Commission must make its determination based on the information presented to it in the present hearing and cannot rely on determinations made based on information provided in prior hearings.¹⁰
20. The Taxpayer alleged that because the County Board lowered the assessment of the Subject Property for tax year 2022 the value should be lowered in the present appeals.

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) (citing *DeVore v. Board of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944)); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-5015.02 (Reissue 2018).

21. The assessed value for real property may be different from year to year according to the circumstances.¹¹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹² For these same reasons, the Commission concludes that subsequent assessments are not relevant to the prior assessment.¹³
22. The Taxpayer presented six tables, three showing a Comparison of Assessed Values of Combined Units with the Individual Comparable Units for tax years 2020, 2021, and 2022 and Comparison of Unit Size/Rated Condition to Assessed Value Per Square Foot for tax years 2020, 2021 and 2022.
23. The County Board presented the 2020 and 2021 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.
24. The Subject Property is made up of what was two separate condominium units that have been combined into a single unit located on the seventh floor of a multi-story building.
25. The County Board presented photographs of the exterior of the building in which the Subject Property is located. The photographs show that the seventh floor of the building on which the Subject Property is located has balconies that are significantly different than those on any other floor of the building. The photographs further show that due to the layout of the roof the Subject Property's balcony is the largest on the seventh floor.

¹¹ *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).

¹² *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).

¹³ See *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

26. The PRF for the Subject Property shows that it was rated as average quality and good condition in both tax year 2020 and 2021.
27. The information presented by the Taxpayer regarding the other units on the seventh floor of the building show that one was rated as good condition and the other was rated as average condition. The Taxpayer did not present information regarding the quality rating of the other units on the seventh floor of the building in which the Subject Property is located.
28. The Taxpayer did not present the PRFs for the properties listed on the tables of assessed values. Accordingly, the Commission cannot see the basis for the County Assessor's determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property.¹⁴
29. The Taxpayer also did not present any photographs, testimony, or other information regarding the interiors of the Subject Property, or the other units located on the seventh floor of the Subject Property's building or real estate listing information describing the interiors of these units to show the quality, condition, or amenities of the Subject Property or the other units on the seventh floor of the building.
30. Without the PRFs or sufficient other information, the Commission is unable to determine the characteristics of the properties listed on the table of assessed values, the contribution of the different characteristics of the properties contained in the Taxpayers tables to their assessed valuations, or their comparability to the Subject Property.
31. From the information presented at the hearing before the commission regarding the 2020 and 2021 tax years the

¹⁴ 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.*

Commission is unable to determine that the Subject Property and the other units in the Subject Property's building are substantially similar in terms of quality, condition, or amenities.

32. The Taxpayer has not demonstrated that the valuations of similarly situated properties were set at materially different levels for tax years 2020 and 2021.
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 determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2020 and 2021 are affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 2,800
<u>Improvements</u>	<u>\$301,400</u>
Total	\$304,200

3. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 2,800
<u>Improvements</u>	<u>\$316,900</u>
Total	\$319,700

4. 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).

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2020 and 2021.
8. This Decision and Order is effective on August 9, 2023.

Signed and Sealed: August 9, 2023



Steven A. Keetle, Commissioner