

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

DEBRA R. KREJCI,
APPELLANT,

CASE NO: 20R 0504

V.

DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2532188352.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$493,100 for tax year 2020.
3. Debra R. Krejci (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 \$493,100 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 October 17, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Debra Krejci 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 Subject Property is a residential parcel improved with a 2,188 square foot ranch style home constructed in 1997 and a 1,200 square foot barn.
17. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
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 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.

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).

21. The Taxpayer alleged that the value of the land component of the Subject Property was not equalized with other comparable properties.
22. The Taxpayer presented information from the County Assessor's web site regarding the 2020 assessed land valuations for the Subject Property and five other properties located on the same street in the same market area as the Subject Property.
23. The Subject Property and one other property were assessed at \$60,000 per acre, but the other four properties were valued at lower amounts per acre.
24. The County Assessors stated that the properties on the same street as the Subject Property were all initially valued using the same price per acre but the lower land valuations, as low as 58.6 percent of the initial assessed value were the result of action by the County Board during the protest process.
25. In *Zabawa v. Douglas County Board of Equalization*, the Nebraska Court of Appeals held that "By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa's comparable property at full market value—the Board failed to fulfill its 'plain duty' to equalize property valuations. Zabawa rebutted the presumption that the Board's decision was correct." The Court determined that the remedy was to reduce the assessed valuation of Zabawa's property to the same percentage of value as that of the comparable property.¹²
26. The assessed value of the land component of the Subject Property should be reduced to 58.6 percent of its value, or \$88,300,¹³ to equalize it with the land component of other comparable properties after County Board Action.
27. The Taxpayer discussed the outbuilding located on the Subject Property, including its interior finish and lack of electricity.

¹² *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹³ \$105,600 x .586 = \$88,300 (rounded)

28. The County Appraisers stated that based on the information presented at the hearing regarding the quality, condition, and lack of electricity in the outbuilding located on the Subject Property the depreciation applied should be increased by 20% for tax year 2020.
29. A 20% increase in the depreciation amount applied of to the outbuilding on the Subject Property would reduce its value by \$8,450.¹⁴
30. The Taxpayer alleged that the value of the Subject Property should be reduced based on its location.
31. The Taxpayer discussed the condition of the street on which the Subject Property was located and presented information regarding the potential special assessment for the improvement of the street in the future.
32. The Taxpayer discussed flooding of the nearby Elkhorn River in 2019 and presented photographs of water on the Subject Property and flood maps of the street on which the Subject Property is located.
33. The County Assessors stated that they were aware of the condition of the street and the flooding potential of the properties located on the same street as the Subject Property and recent sales used to calibrate the assessment model for the market area took those factors into account.
34. The Taxpayer did not present information to allow the Commission to otherwise quantify the impact of the street condition or flooding potential on the value of the Subject Property.
35. The Taxpayer discussed cracks that had formed in the poured concrete basement walls and the work that had been done to seal those cracks.
36. The County Appraisers stated that the value of the basement of the Subject Property should be reduced by \$2,000 to account for

¹⁴ \$42,252 x .20 = \$8,450 (NBHD adjustment and quality adjustment of 1.000 for outbuildings)

a poured concrete basement as described by the Taxpayer rather than a block basement as shown on the 2020 PRF.

37. Based on all of the information provided at the hearing the Commission finds that the equalized value of the Subject Property for tax year 2020 is \$465,350, with a value of the land component of \$88,300 and a value for the improvements of \$377,050.
38. 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.
39. 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:

Land	\$ 88,300
<u>Improvements</u>	<u>\$377,050</u>
Total	\$465,350
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 September 29, 2023.

Signed and Sealed: September 29, 2023



Steven A. Keetle, Commissioner