

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

EDWARD R. KACZMAREK,
APPELLANT,

CASE NO: 20R 0527

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 consists of an improved residential parcel in Douglas County, parcel number 1419020000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$93,000 for tax year 2020.
3. Edward R. Kaczmarek (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 \$93,000 for tax year 2020.
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 September 13, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Edward R. and Marcella Kaczmarek were 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 1,484 square foot one and one-half story multiple-residential property constructed in 1910 with a quality rating of average and condition rating of fair.
17. The Subject Property is used as a rental property.
18. The Taxpayer alleged that the increase in value of the Subject Property from the prior assessed value was unreasonable or arbitrary.
19. 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.
20. The County Appraisers stated that it was determined by the County Assessor's office that land values in the Subject Property's market area were undervalued and the land values for all properties in the area were reassessed for tax year 2020.
21. The PRF indicates that the market area in which the Subject property is located had a land value review for tax year 2020.

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).

22. 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
23. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
24. The Taxpayer argued that the value of the Subject Property should be lowered due to its condition.
25. The Taxpayer discussed the foundation, retaining wall, windows, plumbing and gutters of the Subject Property.
26. The Taxpayer provided photographs of the exterior of the Subject Property
27. The Taxpayer did not provide estimates for the repair of the condition items discussed.
28. The County Appraisers stated that based on the photographs and description of the Subject Property provided by the Taxpayer the condition rating of fair would reflect the repairs and maintenance issues discussed by the Taxpayer. The County Appraisers stated that any condition rating lower than fair would indicate that the property is unrentable.
29. The Taxpayer has not demonstrated that the County Assessors determination of fair condition for the Subject Property is unreasonable or arbitrary.
30. The Taxpayer presented income and expense information for the Subject Property.
31. Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across

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)

years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.¹²

32. The Taxpayer did not present any information regarding market rents or expenses for rental properties in the area.
33. The Taxpayer has failed to demonstrate that the income and expense information provided reflected typical market data.
34. The Taxpayer discussed the repairs made to the Subject Property after a 2009 fire which required the removal of the basement finish in the Subject Property and lower ceiling height in the basement.
35. The County Appraisers acknowledged the height of the basement ceilings of the Subject Property and stated that the per square foot value applied for the basement of the Subject Property accounted for ceiling heights greater than a crawlspace but not higher than 8 feet in height.
36. The Commission finds that the value of \$7,900¹³ attributed to the basement finish that did not exist for the 2020 tax year should be removed from the value of the Subject Property for tax year 2020.
37. The Commission finds that the value of the Subject Property for tax year 2020 is \$85,100, with \$24,800 for the land component and \$60,300 for the improvements.
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 determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

¹² International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

¹³ \$17,225 (value of basement finish) - \$9,310 (54.05% depreciation) = \$7,900 (rounded)

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	\$24,800
<u>Improvements</u>	<u>\$60,300</u>
Total	\$85,100

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 6, 2023.

Signed and Sealed: September 6, 2023



Steven A. Keetle, Commissioner