

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

JOSEPH G. GIITTER,
APPELLANT,

CASE NO: 20R 0636

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 2140000343.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$355,200 for tax year 2020.
3. Joseph G. Giitter (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 \$355,200 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 November 17, 2022, at Omaha State Office Building, 1313 Farnam, Room 222, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joseph and Rebecca Giitter 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 1,914 square foot three story townhouse constructed in 2005. The Subject Property has a quality rating of very good and a condition rating of good.
17. The County Board presented the 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 indicates that the market area in which the Subject property is located was reappraised for tax year 2020.
19. The Taxpayer alleged that condition of the Subject Property should be reduced due to structural issues and necessary repairs.
20. The Taxpayer stated that the Subject Property's proximity to railroad tracks precipitated damage caused by the vibrations generated by the trains.
21. The Taxpayer presented a Canadian case study report regarding house and mobile home vibrations caused by trains in British Columbia in the 1980's.

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 Taxpayer presented photographs of cracks in the drywall on the interior of the Subject Property, photographs showing gaps between the bottom of the walls/trim and the floor in one of the bathrooms, garage, and utility room, and photographs of a gap between the countertop and the backsplash in the kitchen.
23. The Taxpayer stated that not all trains caused vibrations in the Subject Property. The Taxpayer also alleged these vibrations were unique to the Subject Property and did not affect other units in the townhouse development.
24. The Taxpayer alleged that the condition of the windows and doors was such that they allowed water intrusion into the interior of the Subject Property.
25. The Taxpayer presented an estimate to replace the windows and doors of the Subject Property for approximately \$80,000 obtained in 2022.
26. The Taxpayer did not present any evidence documenting or demonstrating the damage caused by water intrusion.
27. The Taxpayer alleged that the value of the Subject Property should be reduced due to the condition of the roof.
28. The Taxpayer showed a video of water running out of the light fixture in the bathroom ceiling taken at sometime in 2019 or 2020.
29. The Taxpayer stated that the roof had been repaired by the homeowner's association sometime prior to 2019 and that now each townhome had their own roof and was responsible for their own repairs.
30. The Taxpayer presented invoices for roof repairs made prior to the assessment date as well as for additional roof work done after the assessment date.
31. The Taxpayer stated that an inspection of the roof had been conducted but that no cause for the recurring leaks had been found.

32. The Taxpayer discussed an engineering review of the Subject Property, but no report or conclusions of this review was presented.
33. The County Board presented aerial photographs of the Subject Property and the surrounding townhouses.
34. The County Appraisers discussed the townhome development in which the Subject Property is located.
35. The County Appraisers stated that there were no other reports of vibrations caused by the nearby trains or damage to any other properties in the area due to the proximity of the railroad tracks or movement of the trains.
36. The County Appraisers discussed the photographs and estimates presented by the Taxpayer. The County Appraisers noted that the cracks in four of the five photographs ran along the taped seams in the drywall.
37. The County Appraisers stated that after reviewing the photographs, estimates, and the statements of the Taxpayer regarding the condition of the Subject Property their opinion of the condition rating of the Subject Property as good, as of the January 1, 2020, assessment date would not change.
38. The Taxpayer has failed to present sufficient evidence to demonstrate the condition of the windows and doors of the Subject Property or quantify the impact damage to the Subject Property caused by vibration, water intrusion, or settling.
39. The Taxpayer failed to demonstrate that the determination of the quality rating of good for the Subject Property as of the January 1, 2020, assessment date was unreasonable or arbitrary.
40. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
41. The Taxpayer presented information from the County Assessor's web site regarding the Subject Property and another property with the same floor plan located across the street from the Subject Property for tax year 2022.

42. The information presented by the Taxpayer is incomplete and the information that was presented shows differences between the characteristics of the Subject Property and the property across the street. Additionally, the information regarding the Subject Property from the Assessor's web site for 2022 shows differences in its characteristics from 2020, the tax year in question. No information regarding the characteristics of the property across the street in 2020 was presented.
43. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
44. "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."¹⁰
45. The Taxpayer did not present the PRFs for the property across the street. Accordingly, the Commission cannot see the basis for the determination of assessed value for the property across the street or compare its characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the property across the street or adjustments necessary to make it comparable to the Subject Property.¹¹
46. The County Appraisers discussed sales of properties in the market are of the Subject Property as well as the assessed values of these properties in 2020 to support the assessment of the Subject Property.

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 7, 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.*

47. The Taxpayer has not demonstrated that the assessed value of the Subject Property was not equalized with other comparable properties.
48. 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.
49. 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	\$ 22,100
<u>Improvements</u>	<u>\$333,100</u>
Total	\$355,200

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 October 11, 2023.

Signed and Sealed: October 11, 2023



Steven A. Keetle, Commissioner