

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

MARCY MASON LLC,
APPELLANT,

CASE NO: 21C 0830

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 commercial parcel in Douglas County, parcel number 1515520000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$762,800 for tax year 2021.
3. Marcy Mason LLC (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 \$762,800 for tax year 2021.
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 March 9, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Bob Perrin was present at the hearing for the Taxpayer.
8. Micaela Larsen with the County Assessor's Office (the County Appraiser) was 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 commercial parcel improved with a four-story office building constructed in 1920. The Subject Property has a quality rating of fair and a condition rating of poor.
17. The Taxpayer discussed the history of the Subject Property, including its past uses and tenants.
18. The Taxpayer alleged that the increase in assessed value from the prior assessment, particularly when compared to other commercial properties, 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 commercial properties in the area, including the Subject Property.
20. The County Appraiser stated that it was determined by the County Assessor's office that values in the Subject Property's market area were undervalued and the entire market area reassessed for tax year 2021 having last been reassessed in 2019.

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 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 Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹¹
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
23. The Taxpayer discussed the condition of the property including the elevator, heating and cooling, debris left by prior tenants, roof, and water.
24. The Taxpayer presented photographs of the interior and exterior of the Subject Property including the roof, elevator mechanicals, debris, and electrical box.
25. The Taxpayer did not present information to show that the County Assessor's determination of fair quality and poor condition for the Subject Property was unreasonable or arbitrary.
26. The Taxpayer alleged that a nearby property at 500 S 18th Street was in better condition than the Subject Property but assessed a lower amount.
27. The County Board presented the PRF for the property located at 500 S 18th Street that showed that this property had the same condition rating as the Subject Property and was assessed at the same amount per square foot, only having a lower overall assessed value due to its smaller size.
28. The County Appraiser stated that the property at 500 S 18th Street was being remodeled but that as of the assessment date its condition was similar to the Subject Property.

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

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

29. The Taxpayer did not present information to show the condition of the property at 500 S 18th street as of the assessment date.
30. The County Appraiser stated that the Subject Property was being assessed using the lowest value model for commercial office space in the downtown Omaha market area due to its condition.
31. The Taxpayer alleged that the value of the Subject Property would be reduced due to the presence of the new juvenile detention center directly across the street from the Subject Property.
32. The Taxpayer did not present information to allow the Commission to quantify the impact of the property across the street on the value of the Subject Property.
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 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$248,600
<u>Improvements</u>	<u>\$514,200</u>
Total	\$762,800

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 2021.
7. This Decision and Order is effective on April 10, 2024.

Signed and Sealed: April 10, 2024



Steven A. Keetle, Commissioner