

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

RS KATELMAN INC,
APPELLANT,

CASE NO: 21C 0897

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 1237120000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$320,300 for tax year 2021.
3. RS KATELMAN INC (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 \$320,300 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 April 4, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Rick Katelman was present at the hearing for the Taxpayer.
8. Kurt Skradis 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 residential parcel improved with a 2,784 square foot two story duplex constructed in 1925. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the increase in assessed value, both as a total number and as a percentage increase, from the prior assessments, particularly as compared to other nearby properties, was unreasonable or arbitrary.
18. 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, for each of the tax years on appeal.
19. The County Appraisers 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.

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).

20. 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
21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
22. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
24. "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."¹⁴
25. The Taxpayer presented a table with information for eight other properties he alleged were comparable to the Subject Property but assessed at a lower amount per square foot than the Subject Property
26. The Taxpayer did not present the PRFs for the properties listed in the chart presented. Accordingly, the Commission cannot see the basis for the determination of assessed values or compare their characteristics to the characteristics of the Subject Property as used to determine assessed values. The Commission is unable to determine the contribution of the different

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)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹⁵

27. The information that the Taxpayer did present from the County Assessors web site was not from the tax year before the Commission. The statements of the referee regarding at least one of the properties indicates that its characteristics have changed since the tax year in question. The Commission cannot rely on the information presented by the Taxpayer from the County Assessor's web site to determine comparability of the properties presented with the Subject Property for the tax year at issue.
28. The Commission notes however that if it were to assume that the information presented by the Taxpayer from the County Assessor's web site were accurate for the current tax year for the other properties presented, that information supports the position that the differences in valuation are due to differences in characteristics between the properties, such as quality, style of construction, or amenities such as amount of basement finish, garages, etc.
29. The Subject Property, for example, has a higher quality rating than any of the other properties presented which, with all else being equal, would result in a higher value per square foot.
30. The County Appraisers discussed the differences between the Subject Property and the properties presented by the Taxpayer including the differences in location that would make them not comparable to the Subject Property.
31. The list of sales presented by the County Board indicated that properties with a condition rating of good, like the Subject Property, were valued at a higher amount per square foot than

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on December 9, 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.*

the Subject Property, however the PRF for these properties were not presented and accordingly, the Commission cannot see the basis for the determination of assessed values or compare their characteristics to the characteristics of the Subject Property as used to determine assessed values. The Commission is unable to determine the contribution of the different characteristics of these sold properties presented by the County Board to the Subject Property.¹⁶

32. The Taxpayer stated that the rents received from the Subject Property do not support the assessed value.
33. The Taxpayer discussed formulas for determining rent and the general level of rent received for the Subject Property but did not present the specific rent received for the Subject Property, any rental information for other properties, or any other market rent information.
34. 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.
35. 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.

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on December 9, 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.*

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

Land	\$ 12,700
<u>Improvements</u>	<u>\$307,600</u>
Total	\$320,300

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 May 15, 2024.

Signed and Sealed: May 15, 2024



Steven A. Keetle, Commissioner