

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

DEBORAH D. KNOTT,
APPELLANT,

CASE NO: 21C 0946

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 commercial parcel in Douglas County, parcel number 2016470000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$195,200 for tax year 2021.
3. Deborah D. Knott (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 \$195,200 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 July 17, 2023, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Deborah Knott and Paul Koneck were present at the hearing for the Taxpayer.
8. Keith Nielsen 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 Taxpayer alleged that the increase in value of the Subject Property from the prior assessed values was unreasonable or arbitrary.
17. 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 of commercial 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 2021, and prior to that last reappraised in 2019.
19. 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
20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹

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 argued that the assessed value of the Subject Property should be reduced due to the condition of the Subject Property.
22. The Taxpayer presented photographs of the flat roof of the Subject Property and stated that while they have worked to maintain it the roof has experienced sagging and would need repairs in the future.
23. The PRF shows that the Subject Property has a condition rating of fair for tax year 2021.
24. The County Appraiser stated that he had been to the Subject Property and viewed the exterior as well as the photographs presented by the Taxpayer and in his opinion the condition rating of fair accounted for the condition of the roof of the Subject Property.
25. The Taxpayer has not shown that the County Assessor's determination of fair condition for the Subject Property was unreasonable or arbitrary.
26. The Taxpayer argued that the assessed value of the Subject Property should be reduced due to crime and vagrancy in the area.
27. The Taxpayer discussed recent crime and vagrancy in the area but provided no information to allow the Commission to quantify its impact on the value of the Subject Property.
28. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties.
29. The Taxpayer presented information from the County Assessor's web site for three other nearby properties.
30. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

31. “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.”¹³
32. The Taxpayer did not present the PRFs for the properties that they alleged were comparable to the Subject Property. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property.¹⁴
33. The information presented by the Taxpayer regarding the three nearby properties indicates that two of these properties are categorized as storage warehouses rather than as office buildings and would therefore not be comparable to the Subject Property.
34. The County Board presented a table of five recent comparable sales to the Subject Property, along with the real estate transfer statements and PRF’s for each these properties.¹⁵
35. One of the recent comparable sales is also one of the three properties presented by the Taxpayer as a comparable property (the Saddle Creek Parcel).
36. The Taxpayer stated that the Saddle Creek Parcel was the most comparable to the Subject Property of all the parcels discussed.
37. The Subject Property and the Saddle Creek Parcel are both office buildings and were constructed in 1955 and 1958

¹³ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

¹⁴ 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.*

¹⁵ Two of these five sales are for the same property which sold twice the second time after being reconfigured and rehabilitated to a higher condition rating.

- respectively, both have approximately the same square footage, and both have the same quality and condition ratings.
38. A commercial underwriting report presented put all these recent sales, including the Saddle Creek Parcel, in the peer area for the Subject Property.
 39. From the information presented at the hearing the Subject Property and the Saddle Creek Parcel are comparable properties.
 40. The sales in the table of recent comparable sales support the assessed value of the Subject Property on a per square foot basis, however the assessed value of the Saddle Creek Parcel was determined using a valuation model that resulted in a lower per square foot value than the Subject Property.
 41. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁶
 42. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁷
 43. "Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value."¹⁸
 44. The Commission finds that uniform and proportionate value can be achieved by assessing the Subject Property using the same valuation model as the Saddle Creek Parcel.

¹⁶ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013); *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 577, 471 N.W.2d 734, 742 (1991).

¹⁷ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 63, 425 N.W.2d 320, 322-23 (1988).

¹⁸ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

45. The equalized value of the Subject Property for tax year 2021 is \$156,200.¹⁹
46. 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.
47. 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 2021 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is:
\$156,200
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 2021.

¹⁹ \$9.50 (Rate) x 3,581 sq ft (PGI)	=\$34,020
Vacancy 5% = \$4,082	
EGI	=\$29,937
Expenses 45% = \$11,975	
NOI	=\$17,963
Capitalization Rate 11.50%	
Final Indicated Property Value (Rounded)	=\$156,200

7. This Decision and Order is effective on July 26, 2023.

Signed and Sealed: July 26, 2023



Steven A. Keetle, Commissioner