

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

KATAHDIN ENTERPRISES
LLC,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 22C 0920, 22C
0921

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Properties consist of two improved commercial parcels in Douglas County, parcel number 0622260002 (Case No. 22C 0920) and 0622270002 (Case No. 22C 0921).
2. The Douglas County Assessor (the County Assessor) assessed the parcel in Case No. 22C 0920 at \$625,600 and the parcel in Case No. 22C 0921 at \$625,600 for tax year 2022.
3. Katahdin Enterprises LLC (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 parcel in Case No. 22C 0920 at \$625,600 and the parcel in Case No. 22C 0921 at \$625,600 for tax year 2022.
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 August 25, 2023, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.

7. Carol and Mike Bosse 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cnty. 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 Cnty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cnty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

- 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
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 two parcels that make up the Subject Property are each commercial parcels improved with 8,000 square foot "industrial flex mall" buildings of average quality and condition. The building on the parcel in Case No. 22C 0920 was constructed in 1964 and the building on the parcel in Case No. 22C 0921 was constructed in 1949 and 1956.
17. The Taxpayer alleged that the increase in the assessed value of the Subject Property from the prior assessment was unreasonable or arbitrary.
18. 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

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).

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 Cnty. 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).

19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
20. The Taxpayer alleged that the Subject Properties were overvalued based on a 2018 appraisal report.
21. The Taxpayer did not present an appraisal report valuing the Subject Properties. Taxpayer instead presented a cover letter indicating that an appraisal report valuing the Subject Properties (together with a third building) was performed valuing the properties as of July 5, 2018.
22. The Commission does not consider the cover letter to be competent evidence for the value of the Subject Properties. The value determination is three years prior to the assessment date at issue in these appeals. The letter lists only a collective value for three parcels; it does not state values for the two parcels in these appeals. The appraisal report itself was not presented, removing any foundation or context for the valuation. The Commission gives no weight to the valuation referenced in the cover letter.
23. The Taxpayer alleged that the assessed value of the Subject Properties should be reduced because they did not have a parking lot. There is angled on-street parking located directly in front of the buildings on the Subject Properties. The Taxpayer did not substantiate the effects this should have on the proposed valuation.
24. The County Board presented the Property Record File (PRF) for each of the Subject Properties. The PRF contains information about the characteristics of each 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.
25. The PRF's indicate that the market area in which the Subject Properties are located was reappraised for tax year 2022.

¹¹ Neb. Rev. Stat §77-1301(Reissue 2018)

26. The County Board presented the PRF for five other industrial mall flex properties as comparables. All five properties had the same quality and condition ratings as the Subject Properties. Two of these properties had recently sold, one of which was directly adjacent to the Subject Properties. The comparable properties and were similar in size and age to the Subject Properties.
27. All seven PRF's presented used the income approach to valuation and used the same model (i.e. the same rent rate, expense percentages, etc.).
28. The County Appraiser discussed how the income approach valuation model was created, and that the data used represented typical or market rents and did not apply any parcel's actual income or expense numbers when determining its value.
29. The County Appraiser stated that sales of industrial and commercial properties were used to further calibrate the assessment model to reflect actual values.
30. The Taxpayer alleged that the Subject Properties were over-assessed due to the lower rents charged in the area and the expenses incurred by the Subject Properties.
31. The Taxpayer discussed the approximate numbers for rents and expenses for the Subject Properties. They did not, however, provide documentation such as rent rolls or itemized expenses for the Subject Properties nor for any other properties to show market rents.
32. The Taxpayer has not demonstrated that the income or expense information used by the County Assessor when determining the value of the Subject Properties were unreasonable or arbitrary.
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 determinations of the County Board are arbitrary or

unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2022 are affirmed.
2. The taxable value of the Subject Property in Case No. 22C 0920 for tax year 2022 is:

Land	\$ 84,100
<u>Improvements</u>	<u>\$541,500</u>
Total	\$625,600

3. The taxable value of the Subject Property in Case No. 22C 0921 for tax year 2022 is:

Land	\$ 83,000
<u>Improvements</u>	<u>\$542,600</u>
Total	\$625,600

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2022.
8. This Decision and Order is effective on February 11, 2025.

Signed and Sealed: February 11, 2025



Steven A. Keetle, Commissioner