

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION  
DANIEL P. MCAULIFFE  
APPELLANT,

CASE NO: 22R 0017

V.

KEITH COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE KEITH COUNTY  
BOARD OF EQUALIZATION

## I. BACKGROUND

1. The Subject Property is an improved residential parcel in Keith County, parcel number 330200200.
2. The Keith County Assessor (the Assessor) assessed the Subject Property at \$261,360 for tax year 2022.
3. Daniel P. McAuliffe (the Taxpayer) protested this value to the Keith County Board of Equalization (the County Board) and requested an assessed value of \$226,370 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$261,360 for tax year 2022.
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 24, 2023, at Hampton Inn North Platte, 200 Platte Oasis Pkwy, North Platte, NE, before Commissioner James D. Kuhn.
7. Dan McAuliffe and Carol McAuliffe were present at the hearing for the Taxpayer.
8. Randy Fair (County Attorney) and Renae Zink (the Assessor) 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

---

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

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

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer asserted the assessed value of the Subject Property was excessive when considering things such as a lack of lake view, inadequate coverage of the Subject Property by emergency services, a lack of basement, and existence of a single access point to the Subject Property which is occasionally blocked by a train.
17. The Taxpayer presented photos of the land and exterior of Subject Property to show the condition of the Subject Property.
18. The Taxpayer did not demonstrate what, if any, impact the condition and accessibility had on the value of Subject Property.
19. The Assessor presented the Property Record File (PRF) for the Subject Property showing comparable properties that demonstrate that the Subject Property is equalized with similar parcels.
20. The Assessor stated the increase in value for the Subject Property was due to updated costing and land tables used for tax year 2022.
21. The Assessor also stated that a low assessment-to-sales ratio for properties in the market area which includes the Subject Property, necessitated an increase in valuations to bring properties in the market area closer to the market value.

---

<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

22. 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.
23. 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 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 35,000
<u>Improvements</u>	<u>\$ 226,360</u>
Total	\$ 261,360

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 2022.
7. This Decision and Order is effective on August 23, 2023.

Signed and Sealed: August 23, 2023



\_\_\_\_\_  
James D. Kuhn, Commissioner