

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

CONNIE KOLLING
APPELLANT,

CASE NO: 22R 0190

V.

DAWES COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Dawes County, parcel number 230004998.
2. The Dawes County Assessor (the County Assessor) assessed the Subject Property at \$85,635 for tax year 2022.
3. Connie Kolling (the Taxpayer) protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$30,520 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$85,635 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 **March 29, 2024** at Judicial Center Hearing Room, 604 Heritage Drive, Broken Bow, NE, before Commissioner Jackie Russell.
7. Connie Kolling was present at the hearing for the Taxpayer.
8. Kent Hadenfeldt (Attorney) and Lindy Coleman (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 1.¹
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 one-story, single-family home, built in 1890 with 1,140 square feet (SF) over crawl space, with three bedrooms and one full bathroom. The residence has a quality rating of average (3), a conditional rating of average (3), and is currently used as a rental property earning \$775/mo which includes utilities, located at 534 King St.
17. The Taxpayer purchased the subject property in 2019 for \$65,000, at which time, a similar property was available on the market located at 327 King St, which sold at approximately the same time for \$64,500 according to the submitted gWorks Dawes County Assessor document.
18. The Taxpayer attested that both properties were inspected in 2019 for potential purchase and opined that both properties appeared to be the same in quality and condition at that time and therefore, is being used as a comparable property for the 2022 valuation.
19. The Taxpayer submitted Property Record Files (PRF) for the Subject Property and the property at 327 King St. (Comparable Property).
20. The Taxpayer stated that the Comparable Property currently has a functional obsolescence of 50% (as indicated on the PRF) with no justification from the Assessor's Office records or staff as

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).

to why the adjustment was given and believes that the properties are not being equalized resulting in a discriminatory, unjust, or unfair assessment to the Subject Property.

21. The PRF shows that the Comparable Property is a one-story, single-family home, built in 1918 with 1,048 SF over crawl space, with two bedrooms, one full bathroom, and a solid wall porch of 153 SF. The residence has a quality rating of fair (2) and a conditional rating of worn out (1).
22. The Assessor stated that the appraisal staff will use a hand-keyed functional obsolesces adjustment on properties currently being renovated or remodeled within the county and adjust conditional ratings based on criteria unknown to the Assessor. Those descriptions are also not readily transparent on the PRF, however, the PRF does contain all requirements as laid out in the applicable Nebraska Department of Revenue regulations.⁹
23. The Taxpayer did not produce clear and convincing evidence that the quality and condition ratings assigned to the Subject Property and the Comparable Property were arbitrary or unreasonable.
24. The Taxpayer did not produce clear and convincing evidence that other like described properties were valued disproportionately to the Subject Property.
25. The Assessor stated that mass appraisal techniques are used for valuation purposes. Differing quality and condition ratings will influence mass appraisal assessments differently through cost and depreciation and therefore, may cause a presumption of dis-equalization to a taxpayer when the properties appear to be otherwise comparable.
26. While “uniform and accurate valuation of property requires correct, complete, and up-to-date property data”¹⁰ it is unclear from the Assessor’s records whether a physical inspection has

⁹ 350 Neb. Admin. Code., ch. 10, § 005 (10/26/2014).

¹⁰ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 3.1 (July 2017).

been performed on the Subject Property or the Comparable Property since the 2019 sale and the January 1, 2022 assessment date. This time period may still fall within the six-year review cycle requirements as laid out in statute¹¹ and does not show that a reasonable attempt at uniformity has not been made.

- 27. 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.
- 28. 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	\$ 4,875
<u>Improvements</u>	<u>\$80,760</u>
Total	\$85,635

- 3. This Decision and Order, if no further action is taken, shall be certified to the Dawes County Treasurer and the Dawes 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.

¹¹ Neb. Rev. Stat. § 77-1311.03 (Reissue 2018).

6. This Decision and Order shall only be applicable to tax year 2022.
7. This Decision and Order is effective on May 16, 2024.

Signed and Sealed: May 16, 2024



Jackie S. Russell, Commissioner