

## BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Kenneth R. Kizzier,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0016

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

### Background

1. The Subject Property is a residential parcel improved with a 3,789 square foot two story residence, with a legal description of: The Ridges Lot 70 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$645,700 for tax year 2019.
3. Kenneth R. Kizzier (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$540,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$645,700 for tax year 2019.
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 May 26, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were present for the County Board.

### 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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<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 (2009).

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>
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>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the county’s determination of the quality rating of very good for the Subject Property was unreasonable and arbitrary and that the Subject Property should have a quality rating of good.
17. The Taxpayer presented photographs he took of the interior of the Subject Property, which he stated reflected the quality and condition of the Subject Property as of the assessment date.
18. The Taxpayer stated that the Subject Property had been a Street of Dreams home but that amenities such as a huge built in sound system and CCTV system that were present on the Street of Dreams showings were removed and no longer present as of the assessment date.
19. The Taxpayer also stated that the quality rating of the Subject Property was changed from very good in 2019 to good in 2021.
20. The County Board presented the 2019 Property Record File (PRF) for the Subject Property and information regarding recent valid sales for each tax year.

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<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.*

<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, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

21. The PRF for the Subject Property shows that it had a quality rating of very good and a condition rating of average for the 2019 assessment. The account notes indicate that at the 2019 preliminary hearing, the County Assessor's office changed some characteristics and reviewed the quality rating of the Subject Property. Based on this review, the County Assessor's office determined that a quality adjustment down to good was not warranted.
22. The County Board presented the Multiple Listing Service (MLS) detail from the 2000 sale of the Subject Property, which listed its characteristics and features. Additionally, MLS states that the Subject Property was a Street of Dreams home, was built by Thakett, and has features such as leaded glass, library with built ins, and gourmet hearth room with Corian.
23. The County Appraisers stated that Thakett is a high-quality builder that primarily builds very good quality residences.
24. The County Board also presented aerial photographs of the Subject Property and other properties showing the differences in rooflines and fenestration associated with properties with a quality rating of very good versus good.
25. Workmanship, materials, and design are all elements of construction that determine the quality rating of a residence, and while the quality of individual components may vary the overall quality will tend to be consistent for the entire residence.<sup>9</sup>
26. "Residences at Very Good Quality are typical of those built in high-quality tracts or developments and are frequently individually designed. Attention has been given to interior refinements and detail. Exteriors have good fenestration with some custom ornamentation."<sup>10</sup>
27. The appraisal of real estate is not an exact science.<sup>11</sup>
28. The Taxpayer presented a 2017 appraisal report that used a quality rating of good to determine the replacement cost of the Subject Property. The appraisal report contains floorplans and photographs of the interior and exterior of the Subject Property taken in 2017. The appraisal report does not indicate why the choice of good for quality was made and the appraiser that prepared the report was not present at the hearing.
29. "[T]he value of the opinion of an expert witness is no stronger than the facts upon which it is based."<sup>12</sup>
30. "Ordinarily the valuation by the assessor is presumed to be correct."<sup>13</sup>
31. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>14</sup> For this reason, a prior year's assessment is not relevant to the

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<sup>9</sup> Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at 6 (12/2010).

<sup>10</sup> Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at VG-1 (6/2011).

<sup>11</sup> *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N.W.2d 872, 874 (1977)

<sup>12</sup> *Lindsay Manufacturing Co., v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994) (citing *Mutual of Omaha v. Broussard*, 233 Neb. 916, 448 N.W.2d 600 (1989)).

<sup>13</sup> *Helvey v. Dawson County Bd. of Equalization*, 495 N.W.2d 261, 242 Neb. 379 (Neb. 1993), citing *Josten-Wilbert Vault Co. v. Board of Equalization*, 179 Neb. 415, 138 N.W.2d 641 (1965).

<sup>14</sup> See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

subsequent year's valuation.<sup>15</sup> For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.

32. The information before the Commission supports a quality rating of very good for the Subject Property for tax year 2019.
33. The Taxpayer has not proven that the condition rating of very good for the Subject Property as shown on the 2019 PRF was arbitrary or unreasonable.
34. The Taxpayer further alleged that other properties with the same quality of construction as the Subject Property were rated as good quality (rather than very good), resulting in valuations that were not equalized.
35. The Taxpayer presented pictures of the interior of three properties that were rated good quality by the County Assessor. The photographs were from marketing materials related to the 2017 sale listings of these properties.
36. The Taxpayer also presented partial PRFs for these properties. The portions of the PRF which typically include sketches and external photographs were not presented.
37. Two of these properties were included in the County Board aerial photographs presented to demonstrate external characteristics of a good quality rating.
38. The Taxpayer presented partial PRFs of properties whose quality rating changed after a sale or a protest. The portions of the PRF which typically include sketches and external photographs were not presented.
39. The Taxpayer alleged that changes in the quality ratings of properties demonstrated that the County Assessor's determinations of quality rating are arbitrary and unreasonable.
40. The County Appraisers stated that while quality ratings do not change often, changes may be made based if new information is collected when properties are sold or remodeled, if new information is presented to the County Assessor or County Board during protests, or if properties are inspected.
41. "[A]n annual appraisal program does not require that every property be reinspected every year or that every valuation be changed every year. Values need to be changed only when a property has changed physically or when there is a clear indication based on market evidence that in-place valuations no longer meet level and uniformity standards. This approach requires assessors to update the property inventory on an ongoing basis, continually monitor market trends, and update values as necessary."<sup>16</sup>
42. The Taxpayer has not presented information to demonstrate that the quality ratings or changes to the quality ratings of any of the properties presented were arbitrary or unreasonable.
43. 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.

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<sup>15</sup> See *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

<sup>16</sup> International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 29-30 (2011).

44. 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.

## 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$107,000
<u>Improvements</u>	<u>\$538,700</u>
Total	\$645,700

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 2019.
7. This Decision and Order is effective on April 1, 2022.

Signed and Sealed: April 1, 2022

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Steven A. Keetle, Commissioner