

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

DIANE K. BINKLY  
REVOCABLE TRUST, JOHN  
L. BINKLY, TRUSTEE,  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NOS: 20R 0359

DECISION AND ORDER  
REVERSING THE DECISION  
OF THE DOUGLAS COUNTY  
BOARD OF EQUALIZATION

CASE NO: 21R 0670

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

**I. BACKGROUND**

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 1627463211.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$684,300 for tax year 2020 and \$641,100 for tax year 2021.
3. The Diane K. Binkly Revocable Trust, John L. Binkly, Trustee (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 Subject Property was \$611,000 for tax year 2020 and \$641,100 for tax year 2021.
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 January 13, 2022, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John Binkly was present at the hearing for the Taxpayer.
8. Scott Barnes 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.<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

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<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.

- 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>

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

16. The Subject Property is a 0.81 acre parcel improved with a 2,377 square foot ranch style property built in 2000.
17. The Taxpayer alleged that the assessed value increase from the prior assessment is too high.
18. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup>
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
20. The County Board presented the 2020 and 2021 Property Record File (PRF) for the Subject Property. The PRF contains

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<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).

<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).

<sup>9</sup> See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</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>11</sup> Neb. Rev. Stat §77-1301(Reissue 2018).

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 attributed to each of the characteristics of residential properties in the area, including the Subject Property.

21. The PRFs show that there was a reappraisal of the market area in which the Subject Property is located for assessment year 2020.
22. The Taxpayer presented information regarding assessments prior to the 2020 reassessment that showed different determinations being made regarding the Subject Property in prior years.
23. The Taxpayer presented only his notations regarding his intent and understanding in reaching “agreements” with the County Assessor and or County Board for prior tax years assessments.
24. The Commission gives little weight to “agreements” made under prior assessment models and assessment years and must focus on the characteristics and value of the Subject Property for the tax years at issue.
25. The Taxpayer alleges that the Subject Property has the least desirable lot in the subdivision due to its location, shape, and easements, and its value should therefore be reduced.
26. The Subject Property is one of two lots located at the end of a cul-de-sac, one of two cul-de-sacs west of 142<sup>nd</sup> street in the Linden Estates 2<sup>nd</sup> Addition.
27. The Taxpayer presented several renderings of the Subject Property’s lot showing storm sewer and drainage easements.
28. The storm sewer and drainage easements appear to line up closely with the required setbacks for construction on the Subject Property and the driveways on the Subject Property are constructed over portions of these easements.
29. The Taxpayer also presented a subdivision drawing that shows a number of different lot shapes and sizes as well as similar

easements on the properties at the end of each of the two cul-de-sacs west of 142<sup>nd</sup> street in the Linden Estates 2<sup>nd</sup> Addition, as well as other lots in the subdivision.

30. The County Board presented an aerial photograph of the Subject Property and nearby lots showing a variety of lot shapes near the Subject Property.
31. The Taxpayer did not present information to demonstrate the impact the location, shape, or easements would have on the value of the land portion of the Subject Property.
32. The Taxpayers alleges that the quality of construction of the Subject Property as determined by the County Assessor is incorrect.
33. The Taxpayer described portions of the interior of the Subject Property such as the type of bathroom fixtures, and kitchen countertops.
34. The Taxpayer stated that the floor in the basement of the Subject Property froze, cracked, and heaved.
35. The Taxpayer also stated that the floor in the main living area was not level.
36. The Taxpayer presented no photographs of the interior of the Subject Property or estimates for the repair of the described floor issues.
37. The County Appraiser stated that based on the information presented to the Commission, including the Taxpayers statements and the PRF, the quality rating of very good for the Subject Property was accurate for tax years 2020 and 2021.
38. The statements of the Taxpayer do not show that the quality rating of very good for the Subject Property is unreasonable, arbitrary, or incorrect. Instead, the Taxpayer's statements would be more relevant as to the condition rating of the improvements, which is listed as "average." However, the Taxpayer's statements also do not demonstrate that the condition rating of average is unreasonable, arbitrary, or incorrect.

39. The County Appraiser stated that the value of as determined by the County Assessor prior to County Board adjustment of \$684,300 was the correct value of the Subject Property for tax year 2020.
40. The Taxpayer alleged that the value of the Subject Property was not equalized with other comparable properties.
41. The Taxpayer presented information regarding properties located in the same subdivision as the Subject Property. The Taxpayer also presented information from the County Assessor's web site regarding these properties.
42. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
43. "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."<sup>13</sup>
44. The information presented by the Taxpayer show that properties presented have significant differences in characteristics and features such as size, style of construction, fireplaces, garage size, basement size and finish, decks, patios, and swimming pools.
45. The Taxpayer did not present the PRFs for the properties alleged to be 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. The Commission is unable to determine the

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

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

- contribution of the different characteristics of the properties contained in the Taxpayers charts to the Subject Property.<sup>14</sup>
46. The Commission is unable to determine the comparability of the properties presented by the Taxpayer to the Subject Property.
47. The Taxpayer has not shown that the per square foot value of the Subject Property is not equalized with other comparable properties.
48. The Taxpayer presented the Douglas County Board of Equalization Summary Form for 2020 for another property in the same subdivision as the Subject Property (the Decatur St. Property) that showed that the protest did not receive coordinator review and that the County Board therefore set the Decatur St Property's 2020 valuation as the same valuation set for the property in 2019 value without review.
49. 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.<sup>15</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>16</sup>
50. If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment."<sup>17</sup>

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<sup>14</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 19, 2021, 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.*

<sup>15</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>16</sup> *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribanie v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

<sup>17</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

“There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>18</sup>

51. “By adjudicating tax protests in greatly disparate amounts...the Board failed to fulfill its ‘plain legal duty’ to equalize property valuations.”<sup>19</sup>
52. 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.<sup>20</sup>
53. The Taxpayer has shown that the 2020 value of the Subject Property was not equalized with the assessed value of other properties reviewed and adjusted by the Board of Equalization.
54. Because the County Board failed in its duty to equalize property valuations by reducing the assessed value of the Decatur St. Property due solely to a lack of coordinator review, the Commission finds that for tax year 2020, the equalized value of the Subject Property is the same as the 2019 value of \$569,700.
55. The information from the County Assessors web page shows that the value of the Decatur St. Property was the same for tax year 2021 as it was for 2020. However, the reason for this is not before the Commission. There is no information showing County Board action regarding this property and the PRF was not presented showing the basis for the 2021 value of this property as determined by the County Assessor. The Commission cannot determine from the information presented whether the valuation was simply carried over or whether it was reduced or otherwise altered based on the characteristics of the property. Without this information from the PRF or information showing action by the County Board the Commission cannot conclude that it was not equalized with the value of the Subject Property.

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<sup>18</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>19</sup> *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

<sup>20</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)



56. For tax year 2020 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.
57. For tax year 2020 the Taxpayer has 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 vacated.
58. For tax year 2021 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.
59. For tax year 2021 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 decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is affirmed.
2. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2021 is affirmed.
3. The taxable value of the Subject Property for tax years 2020 and 2021 are:

| <b>Case No. 20R 0359</b> |                  |
|--------------------------|------------------|
| Land                     | \$150,400        |
| <u>Improvements</u>      | <u>\$419,300</u> |
| Total                    | \$569,700        |

**Case No. 21R 0670**

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| Land                | \$108,500        |
| <u>Improvements</u> | <u>\$460,600</u> |
| Total               | \$641,100        |

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 years 2020 and 2021.
8. This Decision and Order is effective on February 15, 2023.

Signed and Sealed: February 15, 2023.



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Steven A. Keetle, Commissioner