

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

BRIAN R. BERRY
APPELLANT,

CASE NO: 20R 0442

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 1627463087.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$805,200 for tax year 2020.
3. Brian R. Berry (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$805,200 for tax year 2020.
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 June 10, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Brian Berry was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (the County Appraisers) 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 0.46-acre residential parcel improved with a 4,606 square foot two-story residence constructed in 2006. The Subject Property has a quality rating of very good and a condition rating of average.
17. The Taxpayer alleged that the assessed value increase from the prior assessment is too high. The Taxpayer further argues that the valuation of the Subject Property was reduced by the County Board for the 2021 assessment, and it should therefore be reduced for tax year 2020.
18. The County Appraisers stated that the properties in the market area, including the Subject Property, had not been reappraised since 2017 and that valuations had not change in the past three years.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.

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

¹⁰ 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).

20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
21. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains 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.
22. The Taxpayer alleged that the valuation of the Subject Property did not take into account market factors unique to the Subject Property, a business park located down the street from the Subject Property, the Subject Property's location backing up to 132nd street a major north south road, and the presence of unimproved lots on the Subject Property's street.
23. The County Appraisers stated that they had no data that would indicate that the business park, or empty lots had an impact on the value of the Subject Property.
24. The Taxpayer did not present any information that would quantify any impact on the market value of the Subject Property due to the business park or empty lots. Without such information, the Commission cannot determine what, if any, adjustments are warranted for the value of the Subject Property.
25. The County Appraisers stated that there had not been a sale of a property directly adjacent to 132nd Street in the market area since 2016 and that there was not a specific adjustment due to the presence of 132nd street determined for the 2020 assessment year.
26. The account notes in the PRF for the Subject Property indicate that a 20% reduction in land values for properties located along 132nd street was applied to the Subject Property in 2017 and the valuation history shows that the 2017 land value is the same as the 2020 land value.

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

27. The PRFs for other parcels located on the same street as the Subject Property also show that the land valuations for parcels that are adjacent to 132nd street are lower than the land valuations for parcels that are not adjacent to 132nd street.
28. The information presented to the Commission indicates that the 2020 valuation of the Subject Property does take into account the impact of the presence of 132nd street to the Subject Property.
29. The Taxpayer alleged that the Subject Property was not being equalized with other comparable properties.
30. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹²
31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
32. The Taxpayer presented the PRF for the Subject Property and the other four parcels located on the same street as the Subject Property which had lower total valuations than the Subject Property.
33. The PRFs provided by the Taxpayer show that the differences in overall value per square foot are due to differences in the characteristics of the improvements on the property such as type of construction, quality of construction, condition, age, amount of above ground square footage, amount of basement finish, garages, fireplaces, porches, paving and patios, and swimming pools.
34. The Subject Property has the lowest base value per square foot and lower overall value per square foot of the two-story properties and the second lowest base value per square foot and second lowest overall value per square foot of all of the parcels.

¹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

The Subject Property also has the highest depreciation applied based on its age and condition rating.

35. The Subject Property has the highest overall assessed value because it is the largest residence with the most above ground living space and the largest amount of finished basement.
36. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
37. 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.
38. 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 2020 is affirmed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$121,900
<u>Improvements</u>	<u>\$683,300</u>
Total	\$805,200

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 2020.
7. This Decision and Order is effective on March 16, 2023.

Signed and Sealed: March 16, 2023



Steven A. Keetle, Commissioner