

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

DENISE K. SABATKA,  
APPELLANT,

CASE NO: 21R 0753

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 2322340000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$106,700 for tax year 2021.
3. Denise K. Sabatka (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 \$106,700 for tax year 2021.
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 April 4, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Denise Sabatka was present at the hearing for the Taxpayer.
8. Kurt Skradis 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 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>

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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.

<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 Subject Property is a residential parcel improved with a 1,120 square foot ranch style residence constructed in 1961. The Subject Property has a quality rating of average and a condition rating of fair.
17. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to its condition.
18. 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 residential properties in the area, including the Subject Property.
19. The Taxpayer presented photographs of the interior and exterior of the Subject Property and discussed its condition.
20. The Taxpayer presented estimates for repair of a basement leak, kitchen flooring, roof and gutter replacement, window replacement, garage replacement, replacement of western retaining wall, replacement of western fence, and new air conditioning system.

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<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).

21. The Taxpayer discussed the condition of the Subject Property as well as repair work that had been done both before and after the assessment date.
22. The County Appraiser stated that the condition of the Subject Property as described by the Taxpayer and indicated by the provided photographs as well as the repair items covered by the provided estimates were considered when determining the condition rating of fair for the Subject Property.
23. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
24. The Taxpayer alleged that the assessed value of the Subject Property should be lowered due to the presence of commercial properties to the north and west of the Subject Property and traffic near the Subject Property.
25. The Taxpayer presented photographs of the adjacent gas station, service station, and car wash to the north and west of the Subject Property taken from the Subject Property and discussed the operation of these businesses and the actions of their patrons.
26. The Taxpayer discussed traffic on the street in front of the Subject Property as well as nearby 42<sup>nd</sup> street, a major north south road, as well as commercial activity in the neighborhood as well as commercial and industrial activity farther to the east that could be heard and sometimes smelled from the Subject Property.
27. The County Board presented a map of the Subject Property's market area showing multi uses on the edges of the market area both adjacent to the Subject Property as well as other properties in the area.
28. The Taxpayer did not present information to allow the Commission to quantify the impact of the property across the street on the value of the Subject Property.

29. 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.
30. 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 11,300
<u>Improvements</u>	<u>\$ 95.400</u>
Total	\$106,700
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 2021.

7. This Decision and Order is effective on May 15, 2024.

Signed and Sealed: May 15, 2024



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Steven A. Keetle, Commissioner