

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

EDWARD J. & CHRISTINE C.  
POLZIN,  
APPELLANT(S),

V.

SARPY COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NO: 22R 0503

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

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Sarpy County, parcel number 010937056.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$235,443 for tax year 2022.
3. Edward J. & Christine C. Polzin (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$235,443 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 September 11, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Edward J. Polzin Sr and Christine C. Polzin were present at the hearing for the Taxpayer.
8. Jameson McShane 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 2,103 square foot ranch style residence constructed in 1964. The Subject Property has quality and condition ratings of average.
17. The Taxpayer alleged that the increase in the assessed valuation of the Subject Property since 2019 is unreasonable or arbitrary.
18. The Taxpayers discussed the valuation history of the Subject Property. This valuation history is also found in the Property Record File (PRF) for the Subject Property presented by the County Board.
19. The Taxpayer presented the County Board report from 2019 demonstrating that the assessed value was reduced for tax year 2019.
20. The County Board presented a determination that the increased value determined for tax year 2020 was upheld.
21. 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>

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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).

<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).

22. A decree fixing the value of property under a prior assessment is immaterial and not admissible to prove value under a subsequent assessment.<sup>11</sup>
23. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
24. The Taxpayer discussed the age and condition of the Subject Property as well as the roof that had been replaced due to hail damage two to three years prior to the 2022 assessment date.
25. The Taxpayer did not present information to show that the condition rating of average for the Subject Property was unreasonable or arbitrary.
26. The Taxpayer alleged that the Subject Property should not be in the market area in which the County Assessor had placed it for valuation purposes for tax year 2022.
27. The County Board presented a packet of information regarding the valuation of the Subject Property including an appraiser's statement of the assessment of the Subject Property, the Property Record Card (PRF) for the Subject Property, The PRF for three equalization comparable properties and the PRF for three recent sales near the Subject Property<sup>13</sup>, sales listing information for these parcels, and a list of all properties in the subdivision.
28. The Subject Property is in a market area with the Green Meadows subdivision which surrounds it to the south and east.
29. The Subject Property was constructed in 1964 and the Green Meadows Subdivision was developed in the late 1970's with houses constructed in the 1980's.
30. To the North of the Subject Property is the Spring Creek Subdivision which was developed and had houses constructed in the late 2010's.

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<sup>11</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988) (citing *DeVore v. Board of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944)); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

<sup>13</sup> One of the three sale properties was also one of the three equalization comparable properties.

31. To the West of the Subject Property is the Sunrise subdivision which was developed in the mid 2000's with houses being constructed in the late 2000's and continuing to the early 2010's.
32. The County Appraiser stated that while at one time the Subject Property was in a market area with rural residential properties the Subject Property could no longer be considered rural residential property.
33. The information before the Commission is that for the 2022 tax year the Subject Property is surrounded by developed residential subdivisions and is not rural.
34. The Taxpayer alleged that the Subject Property, being older than all of the other properties in the Green Meadows subdivision should not be in the same market area as these newer properties.
35. The County Appraiser stated that the characteristics of the Subject Property are taken into account when its assessed value are determined. The Subject Property is older than the other properties in the subdivision, so it has a higher amount of physical depreciation applied to account for its age. The Subject Property also has access to a portion of the basement only through the garage, so it has a reduction in value for this functional obsolescence applied that the newer properties in the market area do not have.
36. The PRF of the Subject Property and the other five properties in the market area support the County Assessors statement and further demonstrate that differences in characteristics such as age, garage stalls, and style of construction account for differences in the assessed values of properties in the market area.
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 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 40,000
<u>Improvements</u>	<u>\$195,443</u>
Total	\$235,443

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2022.
7. This Decision and Order is effective on February 9, 2024.

Signed and Sealed: February 9, 2024



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Steven A. Keetle, Commissioner