

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

BRIAN R. BERRY,
APPELLANT,

CASE NO: 22R 0634

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 \$832,200 for tax year 2022.
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 \$832,200 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 April 3, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Brian R. Berry was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (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 1.¹
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 year is too high.
18. 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
19. The Taxpayer alleges that the valuation determination made by the County Board in the prior tax year indicates that the value of the Subject Property for the current tax year is too high.
20. The valuation history for the Subject Property indicates that the County Board lowered the value of the Subject Property from the County Assessor's initial valuation in the prior tax year. The County Board determined that the initial valuation of the Subject Property by the County Assessor for the current tax year was correct and did not change it for the 2022 tax year.

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).

21. A decree fixing the value of property under a prior assessment is immaterial and not admissible to prove value under a subsequent assessment.¹¹
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
23. The Taxpayer stated that the prior year's assessment of the Subject Property, after it was reduced by the Count Board, and the parcel at 805 S 132nd Ave were the same. The Taxpayer further stated that the 2022 value of the Subject Property increased by twice as much as the value of the parcel at 805 S 132nd Ave.
24. The prior year's PRF for the Subject Property and the parcel located at 805 S. 132nd Ave were not presented, but looking at the differences in the characteristics of these properties, nothing explains why they had the same assessed value in the prior tax year. As previously noted, the Commission must look to the assessed values of the Subject Property and any comparable properties for the current year.
25. The Taxpayer alleged that the valuation of the Subject Property did not take into account desirable features that the comparable properties have and the Subject Property lacks including swimming pools, security gates, wrought iron fences, circular driveways, side load garages, and landscaping.
26. The Taxpayer presented the PRF for the Subject Property, the parcel at 805 S 132 Ave and two other parcels located on the same street as the Subject Property as well as a table that indicated whether the properties had the desirable features that the Taxpayer discussed.
27. The PRFs presented show that the presence of a swimming pool is listed and valued for the properties that have them.

¹¹ *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).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

28. The County Appraisers stated that they do not add value for items such as fences, driveways, or landscaping as they have no data to indicate that they add or reduce values in the area.
29. The Taxpayer did not present any information to indicate what value, if any, that a security gate, wrought iron fence, circular driveway, sideload garage, or landscaping differences would add to value of the Subject Property or any of the other properties presented.
30. The Taxpayer has not demonstrated that the desirable features including swimming pools, security gates, wrought iron fences, circular driveways, side load garages, and landscaping, were not otherwise accounted for in the assessments.
31. The Taxpayer alleged that the assessed valuation did not take into account the fact that the Subject Property backs up to 132nd street.
32. The PRFs presented show that the properties located on the side of 132nd Avenue that does not back up to 132nd Street have slightly smaller lots with higher valuations than the Subject Property, which is located on the side of 132nd Avenue that does back up to 132nd Street.
33. The information presented indicates that the assessed valuation of the Subject Property does take into account the fact that it backs up to 132nd Street.
34. The Taxpayer alleged that the Subject Property was not being equalized with other comparable properties.
35. “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.”¹³
36. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

37. The Taxpayer presented the PRF for the Subject Property, the parcel at 805 S 132 Ave, and two other parcels located on the same street as the Subject Property. The Subject Property has the highest total valuation of all four properties presented.
38. The County Assessors stated that the market area that included the Subject Property, the parcel at 805 S 132 Ave, and two other parcels located on the same street, was reappraised for the 2022 tax year.
39. The PRFs provided by the Taxpayer show that the differences in overall value per square foot between the four properties presented are due to differences in the characteristics of the property such as the size of the lot, type of construction, quality of construction, condition, age, amount of above ground square footage, amount of basement finish, garages, fireplaces, porches, paving and patios, swimming pools, and other amenities.
40. The PRF shows that Subject Property has the lowest base value per square foot and lowest overall value per square foot of the two-story properties as well as the lowest base value per square foot and lowest overall value per square foot of all of the parcels presented. The Subject Property also has the highest depreciation applied based on its age and condition rating.
41. 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.
42. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
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.
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.

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	\$171,200
<u>Improvements</u>	<u>\$661,000</u>
Total	\$832,200

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 2022.
7. This Decision and Order is effective on May 17, 2023.

Signed and Sealed: May 17, 2023



Steven A. Keetle, Commissioner