

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

DIANE K BINKLY
REVOCABLE TRUST,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 22R 0637

DECISION AND ORDER
REVERSING 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 1627463211.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$785,600 for tax year 2022.
3. The Diane K Binkly Revocable Trust (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 \$785,600 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 May 25, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John Binkly 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 residential parcel improved with a 2,377 square foot ranch style residence constructed in 2000. The Subject Property has a quality rating of very good and a condition rating of average.
17. The Taxpayer alleged that the value of the land component should be reduced due to the characteristics of the lot.
18. The Taxpayer alleged that the quality rating of the Subject Property should be lowered which would reduce the assessed value of the Subject Property.
19. The Taxpayer presented information regarding assessments, protests, referee recommendations, and Commission determinations made in years prior to the 2022 assessment that showed different determinations being made regarding the Subject Property.
20. 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

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 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.
24. The PRF shows that there was a reappraisal of the market area in which the Subject Property is located for the 2022 assessment year.
25. The Taxpayer presented photographs of the portions of the Subject Property's lot which are subject to storm sewer and drainage easements including a large storm sewer intake located on the Subject Property.
26. The Taxpayer presented several renderings of the Subject Property's lot showing the location of storm sewer and drainage easements.
27. The Taxpayer presented a subdivision drawing that shows a number of different lot shapes and sizes as well storm sewer and drainage easements on the properties located to the west of the Subject Property.
28. The Taxpayer presented an aerial photograph of the Subject Property and nearby lots showing a variety of lot shapes near the Subject Property.
29. The Taxpayer presented information regarding sales of lots near the Subject Property.

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).

30. The lots sales presented by the Taxpayer have differences in location and size that would distinguish them from the Subject Property.
31. Additionally, the sales prices of two of the Taxpayer's three lot sale lots are higher on a per square foot basis than the assessed value of the Subject Property.
32. The Commission finds that the lot sales presented by the Taxpayer are not comparable to the Subject Property.
33. The County Appraisers discussed the assessment of the land component of properties in the subdivision including the Subject Property and indicated that the assessment of the Subject Property already included a reduction to the lot valuation due to the water intrusion caused by the presence of the storm water easement.
34. The County Appraisers stated that based on the information presented at the hearing regarding the storm sewer easement and the photographs of the storm water intake that the value of the land component should be reduced, and that they therefore had a new opinion of value for the land component of the Subject Property of \$227,800 for tax year 2022.
35. The Taxpayer discussed the floor in the kitchen and dining area of the Subject Property. The Taxpayer stated that he had been told the steel beam under the floor in that portion of the home was not the right size causing the floor to be unlevel.
36. The Taxpayer provided photographs of a bubble level placed on a portion of the tile floor in the kitchen of the Subject Property.
37. The Taxpayer stated that the concrete floor of the basement of the Subject Property was not properly poured causing cracks and heaving in the basement floor.
38. The Taxpayer presented photographs of the basement floor of the Subject Property.
39. The Taxpayer stated that the deck on the Subject Property was not properly constructed, requiring additional supports to be installed.

40. The Taxpayer provided photograph of the deck on the Subject Property including the underside of the deck and a deck footing.
41. The Taxpayer stated that the deck on the Subject Property was up to code.
42. The Taxpayer presented photographs of the driveway on the Subject Property and discussed portions that had sunk up to 2 inches.
43. The Taxpayer stated that the floor of the Subject Property's garage was not properly installed causing cracks to form and presented photographs of the garage floor.
44. The Taxpayer did not present engineering reports or repair estimates regarding the issues with the improvement on the Subject Property discussed above. The Taxpayer alleged that he had been unable to get estimates for repairs of the issues discussed because he couldn't find a contractor that was willing to make the repairs.
45. The County Appraisers discussed the other items that were considered when determining the quality rating of the improvements on the Subject Property such as the roofline, windows, and other construction and design elements.
46. The Taxpayer stated that his intent was to construct a "plain Jane" home with a low-quality builder but that he did have to make changes to design elements such as the roofline to get the plans approved by the developer prior to construction of the Subject Property.
47. The County Appraisers stated that based on the information presented at the hearing that the condition rating of the Subject Property should be reduced to fair. The County Appraisers recalculated the value of the improvements on the Subject Property at fair condition and the result was an improvement value of \$489,900 for the improvements on the Subject Property.
48. The Taxpayer presented the PRF and other information regarding the assessments of other properties including

properties that were referenced by the referee in the 2022 protest report as comparable properties.

49. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
50. “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.”¹⁴
51. The PRF’s show that there are significant differences in the characteristics and amenities between the Subject Property and the properties presented by the Taxpayer.
52. For example, the Subject Property is frame masonry veneer construction type while the properties referenced by the referee in the 2022 protest report are frame siding construction type.
53. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
54. The Taxpayer has not demonstrated that the quality rating of very good for the Subject Property as determined by the County Assessor was unreasonable or arbitrary.
55. The Commission finds and determines that the assessed value of the Subject Property for 2022 is \$717,700, with \$227,800 allocated to the land value and \$489,900 for the improvements.
56. 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. The Taxpayer has 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 vacated.

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

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$227,800
<u>Improvements</u>	<u>\$489,900</u>
Total	\$717,700

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 2022.
7. This Decision and Order is effective on January 11, 2024.

Signed and Sealed: January 11, 2024



Steven A. Keetle, Commissioner