

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

ELAINE R. URBAN  
REVOCABLE TRUST,  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 22R 0844

DECISION AND ORDER  
AFFIRMING IN PART AND  
REVERSING IN PART 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 2276998546.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$432,100 for tax year 2022.
3. Elaine R. Urban 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 \$415,000 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 Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Elaine R. and Amanda Urban were 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.<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>

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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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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 2,102 square foot ranch style residence constructed in 2000. The Subject Property has quality and condition ratings of good.
17. The Taxpayer alleged that the increase in value of the Subject Property, as compared to the increase in value for other comparable properties, was unreasonable or arbitrary.
18. The assessed value for real property may be different from year to year according to 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> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>
19. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>

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<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).

<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> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>10</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

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

20. The County Board presented the 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.
21. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2020.
22. The Taxpayer alleged that the increase in the portion of the land value made by the County Board was unreasonable and arbitrary.
23. The County Appraisers stated that while they agreed with the total valuation determined by the County Board in their opinion the amount allocated to the land component should be \$47,900 for tax year 2022.
24. The Taxpayer alleged that the value of the Subject Property should be reduced based on its condition and damage caused by golf balls from the adjacent golf course.
25. The Taxpayer stated that damage from golf balls and the number of golf balls landing on the Subject Property has increased in recent years.
26. The Taxpayer discussed the condition of the fence and deck on the Subject Property and presented photographs of the fence and deck railing.
27. The Taxpayer presented estimates to replace the fence and repair the deck and deck railing.
28. The County Appraisers stated that the County Assessors office notes fences but adds no value for fences in the assessed value.
29. The County Appraisers stated that condition ratings are based on the condition of the entire property both interior and exterior and that based on the photographs of just the fence and deck presented by the Taxpayer their opinion was that the condition rating of good was correct for the 2022 tax year.

30. The County Appraisers discussed the condition of the property and the depreciation applied to the improvements due to the age and condition of the Subject Property. The County Appraisers discussed the application of this depreciation factor to all “Add Ons” such as the in-ground pool and deck of the Subject Property
31. The County Appraisers stated that based on the photographs and estimates provided by the Taxpayer in their opinion the reduction to the total value of the Subject Property by the County Board accounted for the Taxpayers proposed repairs to the Subject Property for which pictures and estimates were provided.
32. The Taxpayer did not present information to show that the determination of condition as good made by the County Assessor’s office for the 2022 tax year was unreasonable or arbitrary.
33. The Taxpayer alleged that the value of the Subject Property should be reduced due to the threat to physical safety and liability concerns caused by golf balls intruding onto the Subject Property.
34. The Taxpayer did not provide information to quantify the impact of golf ball intrusion onto the Subject Property on the value of the Subject Property.
35. Based on the information provided the Commission finds and determines that the value of the Subject Property for tax year 2022 is \$415,000 with \$47,900 allocated to the land component and \$367,100 allocated to the improvements.
36. 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.
37. 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 affirmed in part and reversed in part.

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

Land	\$ 47,900
<u>Improvements</u>	<u>\$367,100</u>
Total	\$415,000

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 September 21, 2023.

Signed and Sealed: September 21, 2023



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Steven A. Keetle, Commissioner