

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

ELLEN L COLLINS
APPELLANT,

CASE NO: 23R 1364

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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 0844451005.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$646,700 for tax year 2023.
3. Ellen L Collins (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 \$646,700 for tax year 2023.
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 12, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Ellen Collins was present at the hearing for the Taxpayer.
8. James Morris (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 one-story, single-family home built in 1993 with 2,153 square feet (SF) above grade, walkout basement area of 2,107 SF with 1,615 SF full finish, 2.50 baths, one fireplace, attached garage with 506 SF, a quality rating of good, and a condition rating of average. The property also features an inground pool with 512 SF.
17. The Taxpayer stated that the Subject Property quality is not equalized with like properties on the street and therefore, causes an arbitrary and unreasonable valuation.
18. The Taxpayer provided an independent appraisal from 2/4/2021 that gives the Subject Property a quality rating of Q3, or average.
19. The Taxpayer stated that there are only two properties with good quality ratings on the Subject Property's street and believes both to be arbitrary determinations.
20. The Taxpayer stated most comparable property to the Subject Property is located at 6601 Stones Throw Dr. which has 14 SF less than the Subject Property and is listed with an average quality rating. The Taxpayer did not provide a Property Record File (PRF) to the Commission to analyze this claim but did provide a property detail page from the Douglas County website.

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).

21. The property detail page of 6601 Stones Throw Dr. does appear to be closely comparable in data detail to the Subject Property with the most notable difference being the age of the property which was built in 1966. The age difference will affect depreciation in the valuation process which has not been quantified by the documents submitted.
22. The Taxpayer stated that no renovations or additions have been constructed at the property to indicate the quality is different from the date built.
23. The Taxpayer stated that conversations with the Douglas County Assessor's office after the 2024 preliminary valuations were released, caused the Assessor's office to change the quality rating of the Subject Property to average for 2024 which consequentially lowers the valuation of the property.
24. The Taxpayer stated that during the 2023 protest process, conversations were held between the referee hired by the Board of Equalization and not the County Assessor's office. For this reason, the Taxpayer feels the claim of the Subject Property having an inaccurate quality rating was dismissed by the Board of Equalization. The Commission agrees.
25. The Appraiser stated that the Subject Property's PRF did not indicate a new opinion of value for the 2023 tax year based on the conversations for the 2024 valuation and therefore, claimed the neighborhood is equalized for 2023. The Commission disagrees.
26. The quality of construction of a residence will influence its cost. Examination of both materials and workmanship is fundamental when determining the overall quality of construction. While the quality of materials and workmanship of individual building components may vary, the overall quality will tend to be consistent for the entire residence. Furthermore, the quality of materials and workmanship will tend to influence each other.⁹

⁹ Marshall & Swift, *Residential Cost Handbook 6* (Dec. 2021).

27. The Taxpayer provided a PRF for the Subject Property which is dated 2024 and shows the change made to the quality rating of the property by the Assessor's office. The PRF also indicates certain improvement details were changed as well, such as a reduction in the basement finish amount, the addition of an open slab porch, and the size of the pool.
28. Quality is decided at the completion of construction and therefore, the Commission finds that the 2023 quality for the Subject Property should be average.
29. The Commission finds that although the date of the independent appraisal report is older, it is the most reliable evidence submitted to determine a new improvement valuation based on a quality reduction for 2023 at \$520,000.
30. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹⁰
31. 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.
32. 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.

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 2023 is vacated and reversed.

¹⁰ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 54,700
<u>Improvements</u>	<u>\$465,300</u>
Total	\$520,000

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 2023.
7. This Decision and Order is effective on September 24, 2024.

Signed and Sealed: September 24, 2024



Jackie S. Russell, Commissioner