

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

David L. Jabens,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0273

Decision and Order Reversing the  
Determination of the Douglas  
County Board of Equalization

Background

1. The Subject Property is a 7.5 acre rural residential parcel improved with a 1,575 square foot ranch style residence, with a legal description of: Jabens Addition\* Lot 1 Block 0 Irreg 7.5 AC, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$224,500 for tax year 2017.
3. David L. Jabens (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$167,295 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$224,500 for tax year 2017.
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 March 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. David L. Jabens and Sharon L. Jabens were present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

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 the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<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 (2009).

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>
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>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that it was unreasonable that the land values for some parcels in the area of the Subject Property decreased from the prior tax year while the value of the land component of the Subject Property increased from the prior year.
17. 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>
18. The County Board presented the Property Record File (PRF) for the Subject Property as well as a table regarding all of the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property.
19. The PRF for the Subject Property indicated that a land valuation study was conducted in Douglas County which resulted in a change in the assessments of the land component of many parcels of property for the 2017 tax year.

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<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<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, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (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 (supra)*.

20. The Taxpayer alleged that the land component of the Subject Property is not assessed uniformly or proportionately with the land component of other comparable properties.
21. The Taxpayer provided maps of the area around the Subject Property as well as the PRF for 9 parcels presented for purposes of demonstrating the valuation of land components as well as PRFs for an additional 7 parcels presented for their improvements.
22. The PRFs provided are for two different types of property: rural residential less than 20 acres and farm greater than 20 acres. The same PRFs show that these parcels have three different land classes: homesite, market, and waste.<sup>11</sup> These classes are valued at \$32,000 per acre, \$12,000 per acre, and \$600 per acre respectively. The PRFs show that these values are uniformly applied to every acre based on land class, whether the type of property is rural residential less than 20 acres or farm greater than 20 acres.
23. The PRFs further demonstrate that only one parcel of improved property under ten acres in size has any acreage classified as waste. This parcel is located off of Ponca Road, is an unusual shape, and has a portion of Ponca Creek running through it, although the information presented does not demonstrate if Ponca Creek is a permanent creek.
24. The Taxpayer alleges that a portion of the Subject Property should be classified as waste rather than as market. The Taxpayer presented photographs and discussed a portion of the western edge of the Subject Property that was described as a “ditch” which drains water south to Canyon Road when it rains. The Taxpayer alleged that the Subject Property and the 38.2 acre parcel of property to the west of the Subject Property share the ditch acreage.
25. The Taxpayer offered aerial photographs of properties in the area but those photographs do not show any of the portion of the Subject Property described by the Taxpayer as the ditch or any portion of the 38.2 acre property to the west of the Subject Property.
26. The information presented does not allow the Commission to determine the number of acres of the ditch that are on the Subject Property or if the ditch acres on the Subject Property are comparable to the acres classified as waste on the 38.2 acre parcel.
27. The Taxpayer alleged that the value of the improvements on the Subject Property were not equalized with the value of other comparable improvements.
28. The PRFs presented demonstrate that the differences in per square foot assessments between the Subject Property and the other properties presented were due to differences in the characteristics of the properties such as style of construction, size, quality of construction, condition, basement, garage size, patio, fireplace, etc.
29. The PRFs demonstrated however that the majority of properties presented received a neighborhood adjustment of 0.8382 while the Subject Property received a neighborhood adjustment of 1.00. Properties directly to the north, east, and south of the Subject Property as well as the closest improved parcel to the west of the Subject Property all received the 0.8382 neighborhood adjustment to the improvements on the parcel. There is

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<sup>11</sup> All parcels discussed are residential parcels, the terms homesite, market, and waste used on the PRF and in this order are not used in the context of agricultural or horticultural land or the statutory and regulatory use of these terms when referring to agricultural or horticultural land.

no basis in the record for the difference in neighborhood adjustment applied to the Subject Property versus the other improved parcels surrounding it.

30. The Commission finds and determines that the neighborhood adjustment factor of 0.8382 should be applied to the improvements located on the Subject Property for an improvement value of \$96,000.<sup>12</sup> The Commission finds that the total assessed value of the Subject Property is \$206,000: \$110,000 for the land component and \$96,000 for the improvements.
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.

#### ORDER

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$110,000
<u>Improvements</u>	<u>\$ 96,000</u>
Total	\$206,000

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 2017.
7. This Decision and Order is effective on March 27, 2020.

Signed and Sealed: March 27, 2020

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Steven A. Keetle, Commissioner

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<sup>12</sup> \$114,500 x .8382 = \$96,000 (Rounded).