

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ronald M. Grasmick,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0286

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

Background

1. The Subject Property is a residential parcel improved with a 2,013 square foot raised ranch style residence, with a legal description of: Meadow Lane Park Lot 14 Block 6 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$211,900 for tax year 2017.
3. Ronald M. Grasmick (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$186,775 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$211,900 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 July 25, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Ronald M. and Cindy Grasmick were present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) and Tim Tran of the Douglas County Assessor/Register of Deeds Office were 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 1.¹
10. The Commission’s review of the determination of the County Board of Equalization is de novo.²

¹ See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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 (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.”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
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

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property is not uniform and proportionate with other comparable sales and other comparable properties in the subdivision. At the hearing before the Commission the Taxpayer requested an assessed value of \$181,775 for tax year 2017.
17. The Taxpayer presented the Property Record Files (PRF) of four raised ranch properties in the same neighborhood as the Subject Property that sold for less than their assessed values.
18. The Taxpayer alleged that the sales prices constitute fair market value, citing the Nebraska Supreme Court determination in *Novak v Board of Equalization*,⁹ and demonstrate that the fair market value the Subject Property is lower than its assessed value.
19. In *Novak*, however, the court went on to hold, “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue;

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ *Novak v. Board of Equalization of Douglas County*, 145 Neb. 664, 17 N.W.2d 882 (1945).

however, standing alone, it is not conclusive of the actual value of property for assessment purposes, and many other matters relevant to the actual value of property appear in the record and must be considered in connection with the purchase price to determine the actual value.”¹⁰ The court affirmed a value higher than the purchase price.

20. The County Board presented the PRF for the Subject Property as well as a spreadsheet of information regarding 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 the area, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
21. Three of the four raised ranch sales presented by the Taxpayer are also on the County Board’s spreadsheet.
22. The County Board’s spreadsheet also shows a fourth raised ranch sale in the same subdivision as the Subject Property; that parcel sold for more than its assessed value.
23. The Taxpayer’s sale that didn’t appear on the County Board’s spreadsheet occurred after the assessment date. The PRF indicates that this property sold for a second time in 2017 for more than the assessed value for 2017.
24. Another of the properties presented by the Taxpayer also sold again after the assessment date in 2017, once for less than the assessed value, and once for more than the assessed value.
25. The information before the Commission does not demonstrate that the assessed value of the Subject Property as determined by the County Board was greater than its actual value.
26. The PRFs presented demonstrate that the differences in per square foot assessments between the improvements on Subject Property and the other properties presented were due to differences in the characteristics of the properties such as size, walkout basement, improved basement square footage, etc.
27. The Taxpayer further alleged that the value of the land component of the Subject Property is not equalized with other comparable properties.
28. The Taxpayer presented the PRF for a property in the same subdivision as the Subject Property that has a larger land component (Taxpayer’s Land Comparable). The Taxpayer argues that this property has a land component that is roughly twice the size as the other properties presented but its land value is not roughly twice the amount of the others, demonstrating that the value of the land component is not valued uniformly and proportionally with the Subject Property.
29. Professionally accepted appraisal principles include the following: “A given land use has an optimum parcel size, configuration, and land-to-building ratio. Any extra or remaining land not needed to support the specific use may have a different value than the land area needed to support the improvement. The portion of the property that represents an

¹⁰ Id, at 666, 483. See also, *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998). (“Sale price is not synonymous with actual value or fair market value.”)

- optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing or ideal improvement can be identified and quantified by the appraiser. Any remaining land area is either excess or surplus land.”¹¹
30. Additionally, “Surplus land is not currently needed to support the existing improvement and cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel.”¹²
 31. The information before the Commission shows that as the size of a land component increases the value increases and the value per square foot decreases, which is to be expected in light of the principles described above. The Taxpayer’s Land Comparable does not demonstrate that the value of the land component of the Subject Property is not valued uniformly and proportionally with that of other comparable properties.
 32. The Taxpayer has not presented information to demonstrate that the county’s methodology for the determination of value for the land components in the same area as the Subject Property was unreasonable or arbitrary.
 33. The Taxpayer presented the PRF of a property that had its land component reduced by the County Board at the protest hearing level.
 34. The Subject Property and the comparable property are of similar size and both improved with raised ranch style residences.
 35. Both the Subject Property and the comparable property protested their assessed values to the County Board for the 2017 tax year, but only the comparable property received a reduction in the value of the land component.
 36. The land component of the Subject Property and the land component of the neighboring property are highly comparable.
 37. Prior to County Board action, the Subject Property had a land component value of \$32,700 and the comparable property had a land component value of \$32,500. After county board action, the value of the land component of the Subject Property remained at \$32,700 and the value of the land component of the neighboring property had been reduced to \$25,000, or 76.9% of its prior value.
 38. The Nebraska Court of Appeals has held that “By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa’s comparable property at full market value—the Board failed to fulfill its ‘plain duty’ to equalize property valuations. Zabawa rebutted the presumption that the Board’s decision was correct.”¹³ The Court determined that the remedy was to reduce the assessed valuation of Zabawa’s property to the same percentage of value as that of the comparable property.¹⁴
 39. The Commission finds and determines that the assessed value of the land component of

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹² Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹³ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹⁴ *Id.*, at 229, 529.

the Subject Property should be reduced to \$25,100,¹⁵ which, when added to the \$179,200 value of the improvement component, would result in a total equalized value of \$204,300 for tax year 2017.

40. 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.
41. 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

IT IS ORDERED THAT:

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	\$ 25,100
<u>Improvements</u>	<u>\$179,200</u>
Total	\$204,300

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 June 12, 2020.

Signed and Sealed: June 12, 2020

Steven A. Keetle, Commissioner

¹⁵ \$32,700 land value x 76.9% = \$25,146 rounded to \$25,100.