

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

John J. Hanson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0288

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 1,361 square foot one story townhome, with a legal description of: Walnut Ridge Hilltop Rep 12* Lot 2 Block 0 42.5 X 135, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$167,200 for tax year 2017.
3. John J. Hanson (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$147,050 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$167,200 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 23, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. John J. Hanson was 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 1.¹
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 value of the land component of the Subject Property and other properties improved with townhomes was too high compared to the lot values of properties improved with single family residences.
17. The Taxpayer presented information from the County Assessor’s web site regarding the values of residential properties in the area of the Subject Property.
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 County Appraiser stated that a minimum amount of land was necessary to have a buildable lot in the area of the Subject Property and that therefore the land values were determined on a per lot basis. Lot values as determined by the County Assessor for the area ranged from \$38,700 to \$42,800 with larger lots having a higher value than smaller

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).

lots regardless of what type of improvement built upon them, but sales indicated that as the size of the lot increased the amount of the increase in value decreased.

20. This determination of lot values is consistent with professionally accepted appraisal methodologies, which indicate that “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 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.”⁹
21. 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.”¹⁰
22. The Taxpayer has not presented information to demonstrate that the County’s determination of value for residential townhouse lots and residential single family lots in the same area as the Subject Property was unreasonable or arbitrary.
23. The Taxpayer next alleged that the value of the land component of the Subject Property was not equalized with the assessed value of the land component of a comparable property.
24. The Taxpayer stated that the Subject Property and the comparable property are a block apart and both improved with residential townhouses.
25. The Taxpayer stated that both the Subject Property and the comparable property protested their assessed values to the County Board for the 2017 tax year but only the neighboring property received a reduction in the value of the land component.
26. The land component of the Subject Property and the land component of the neighboring property are highly comparable.
27. Prior to County Board action, both the Subject Property and the comparable property had a land component value of \$38,900. After county board action, the value of the land component of the Subject Property remained at \$38,900 and the value of the land component of the neighboring property had been reduced to \$14,700.
28. 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.”¹¹ 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

⁹ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹⁰ Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

¹¹ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

property.¹²

29. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$14,700, which, when added to the \$128,300 value of the improvement component, would result in a total equalized value of \$143,000 for tax year 2017.
30. 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.
31. 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	\$ 14,700
<u>Improvements</u>	<u>\$128,300</u>
Total	\$143,000

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 June 5, 2020.

Signed and Sealed: June 5, 2020

Steven A. Keetle, Commissioner

¹² Id., at 229, 529.