

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert Atherton et al.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 17R 0525

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 1,798 square foot two-story residence, with a legal description of: Fairacres Terrace Lot 11 Block 2 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$345,600 for tax year 2017.
3. Robert Atherton et al. (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$284,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$345,600 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. Mary Atherton was present at the hearing for the Taxpayer.
8. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, 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

1. The Taxpayer alleged that the value of the land component of the Subject Property was not equalized with the assessed value of the land component of nearby properties.
2. The Taxpayer presented the Property Record File (PRF) PRF and Douglas County Board of Equalization reports for six properties located on the same street as the Subject Property or one block to the east or west of the Subject Property.
3. The Taxpayer stated that the Subject Property and the six other property protested their assessed values to the County Board for the 2017 tax year, and that the land value of the Subject Property was not reduced, while all six of the other protested properties had their land valuations reduced by the County Board.
4. The basis for the reduction listed on the Douglas County Board of Equalization reports for four of the six protested properties indicates that the reduction was, in whole or in part, due to a lot or land value analysis.
5. One of the properties that had its land value reduced was the property directly next door to the Subject Property to the north (the Neighboring Property).

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).

6. The land component of the Subject Property and the land component of the Neighboring Property are highly comparable.
7. Prior to County Board action the land component of the Subject Property was assessed at \$135,100 and the land component of the Neighboring Property was assessed at \$135,800. After county board action the value of the land component of the Subject Property was \$135,100 and the value of the land component of the neighboring property had been reduced to 55.2 percent of its prior valuation to \$75,000.
8. 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.”⁹ 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.¹⁰
9. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$74,600,¹¹ which, when added to the \$210,500 value of the improvement component, would result in an equalized value of \$285,100 for tax year 2017.
10. 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.
11. 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 | \$ 74,600 |
| <u>Improvements</u> | <u>\$210,500</u> |
| Total | \$285,100 |

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).

⁹ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹⁰ *Id.*, at 229, 529.

¹¹ \$135,100 x 55.2% = \$74,575 rounded to \$74,600.

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 26, 2020.

Signed and Sealed: June 26, 2020

Steven A. Keetle, Commissioner