

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert E. Glasson,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 17R 0282 & 18R 0276

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

Background

1. The Subject Property is a residential parcel improved with a 1,176 square foot residence, with a legal description of: Benson Lot 10 Block 80 E 75 S 200 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$76,800 for tax year 2017.
3. Robert E. Glasson (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$64,100 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$76,800 for tax year 2017.
5. The County Assessor assessed the Subject Property at \$90,200 for tax year 2018.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$60,000 for tax year 2018.
7. The County Board determined that the taxable value of the Subject Property was \$90,200 for tax year 2018.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on January 25, 2019, at the Omaha State Office Building, 1313 Farnam, Room E (301E), Omaha, Nebraska, before Commissioner Steven Keetle.
10. Robert E. Glasson was present at the hearing.
11. 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

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

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

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the value of the land component of the Subject Property should be reduced because the County Board failed to fulfill its ‘plain duty’ to equalize the value of the land component of the Subject Property with a comparable property located in the Miracle Hills subdivision (the Miracle Hills Property) as required by the Nebraska Court of Appeals in *Zabawa*.⁹

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).

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

20. The Taxpayer presented the Property Record File (PRF) for the Miracle Hills Property which showed that the County Board reduced the value of the land component to \$100.
21. The County Appraiser stated that he was familiar with the Miracle Hills Property and that it was unique in that it was located next to a major roadway and had vehicles driven into its backyard on a regular basis. The assessed value of the land component of the Miracle Hills Property was reduced due to this unique and dangerous factor.
22. The Taxpayer also discussed, without presenting the PRF, two other properties assessed at \$100. The County Appraiser indicated that while these two properties were classified as residential, they were not buildable lots; rather, they were unusually shaped outlots associated with a residential subdivision of the type containing drainage ditches, subdivision signs, etc.
23. The Commission finds and determines that the three lots presented by the Taxpayer with land components valued at \$100 are not comparable to the Subject Property and the Taxpayer has not demonstrated a failure to equalize land valuations.
24. The Taxpayer further alleged that the value of the land component of the Subject Property was not assessed uniformly and proportionally with other comparable properties.
25. The Taxpayer offered information regarding the land component assessment of two other residential parcels in the Benson subdivision: a .96 acre parcel assessed at \$25,300 and a 1.03 acre parcel assessed at \$25,600. The Subject Property is less than a third of that size, .32 acres assessed at \$21,100.
26. The County Appraiser indicated that the County Assessor's office did a land valuation study for the 2017 tax year, and that study indicated that as size increased the value of the lots were lower on a per acre basis than smaller lots. This determination by the County Assessor's Office is consistent with professional appraisal practice.
27. "Size differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use."¹⁰
28. "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."¹¹
29. The Taxpayer has failed to demonstrate that the County Board failed to assess the land components of comparable properties uniformly and proportionally.

¹⁰ Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

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

30. The Taxpayer discussed the characteristics and condition of the improvements to the Subject Property.
31. After analyzing the information presented, the County Appraiser indicated that the value of the basement finish should be removed from the 2017 and 2018 assessed values. Based on the different assessment models for each of the tax years, removing the value of the basement finish would result in a reduction of \$3,900¹² for tax year 2017 and a reduction of \$10,100¹³ for tax year 2018.
32. The Commission finds and determines that the value of the Subject Property should be reduced by the amount of the basement finish, resulting in an assessed value of \$72,900 for the 2017 tax year, and \$80,100 for the 2018 tax year.
33. 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.
34. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 and 2018 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$21,100
<u>Improvements</u>	<u>\$51,800</u>
Total	\$72,900

3. The taxable value of the Subject Property for tax year 2018 is:

Land	\$21,100
<u>Improvements</u>	<u>\$59,000</u>
Total	\$80,100

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.

¹² 300 square feet of basement finish x \$14 psf = \$4,185 x .92 NBHD ADJ = \$3,900 (rounded) for 2017 assessment.

¹³ 300 square feet of basement finish x \$28.56 psf = \$8,568 x 1.1773 NBHD ADJ = \$10,100 (rounded) for 2018 assessment.

7. This Decision and Order shall only be applicable to tax years 2017 and 2018.
8. This Decision and Order is effective on February 12, 2020.

Signed and Sealed: February 12, 2020

Steven A. Keetle, Commissioner