

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

K & B Properties, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0251

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 1,344 square foot ranch style property, with a legal description of: West Country Club Heights Lot 10, Block 1 60 x 125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$174,000 for tax year 2018.
3. K & B Properties (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$146,175 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$174,000 for tax year 2018.
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 December 2, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert A. Soukup was present at the hearing for the Taxpayer.
8. Stan Mlotek, Real Estate Specialist with 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 a determination of the County Board of Equalization is de novo.²

¹ 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 did not dispute the assessed value of the improvements located on the Subject Property but rather only the assessed value of the land component as compared to other nearby properties.
17. The Taxpayer presented the Property Record Files (PRF) for the Subject Property, the property directly across the street from the Subject Property, and the three properties to the north of the Subject Property. All of these properties front onto 60th Street.
18. In addition to the PRF for the Subject Property, the County Board presented a spreadsheet of information regarding the qualified improved sales that occurred in the economic area of the Subject Property and the report from the County Board protest proceedings.
19. The County Appraiser stated that the property across the street is on the opposite side of 60th street and in a different subdivision than the Subject Property. Different sales and other factors were used to determine the value of the land components in that subdivision and that therefore it would not be comparable to the Subject Property.

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. County 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).

20. The PRF for the property across the street from the Subject Property indicates that it is in a different subdivision and the map presented indicates that it has different characteristics than the properties in the same subdivision as the Subject Property.
21. The three properties located to the north of the Subject Property are all along North 60th Street and in the same subdivision as the Subject Property.
22. The County Appraiser also discussed the properties located to the north of the Subject Property, indicating that their lower per square foot value was due to their larger size as compared to the Subject Property and the principle that excess land has a lower contribution to value.
23. Professional appraisal practices hold 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
24. The PRF for the first two properties north of the Subject Property demonstrate this principle. Their total land values are higher than the Subject Property while their resulting per square foot values are less than the Subject Property.
25. The above principle breaks down when examining the land component of the third property north of the Subject Property. This property is a vacant lot being utilized as if it were part of an adjoining improved parcel; however, the information presented demonstrates that it is a separate unimproved parcel of land.
26. Land must be valued as though vacant and available to develop to its highest and best use.¹⁰
27. The third parcel north of the Subject Property is a 0.337 acre parcel while the other two parcels are 0.28 and 0.46 acres in size. The assessed value of the land component of the third parcel, however, is \$11,300 while the land component of other two parcels are assessed at \$33,900 and \$34,200. While their sizes are similar the land component of the third parcel is being valued at 33% of the value of the other two parcels north of the Subject Property.
28. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹¹
29. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹²

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

¹⁰ Title 350 Neb. Admin. Code ch 50 §002.05A (7/17), See also, International Association of Assessing Officers, *Property Assessment Valuation*, at 230 (3rd ed. 2010)

¹¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

30. The Commission finds and determines that the equalized value of the land component of the Subject Property for tax year 2018 is \$11,100,¹³ which when combined with the improvement value of \$140,400 would result in a total assessed value of 151,500.
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

IT IS ORDERED THAT:

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

Land	\$ 11,100
<u>Improvements</u>	<u>\$140,400</u>
Total	\$151,500

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 2018.
7. This Decision and Order is effective on February 8, 2021.

Signed and Sealed: February 8, 2021

Steven A. Keetle, Commissioner

¹³ \$33,600 x 0.33 (33%) = \$11,088 rounded to \$11,100.