

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

James A. Hopkins,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0363

Decision and Order Reversing the  
County Board of Equalization

Background

1. The Subject Property is a vacant residential lot, with a legal description of: Riverside Hills Lot 42 Block 0 Irreg.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$68,500 for tax year 2018.
3. James A. Hopkins (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$68,500 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 January 14, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. James A. Hopkins was present at the hearing.
8. Stan Mlotek (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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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.”<sup>3</sup> That presumption “remains until

<sup>1</sup> Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

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

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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated he was looking for equalization as a vacant lot (Lot 32) that is nearly the same size as the Subject Property, in the same neighborhood, had its value reduced by the Douglas County Board of Equalization to \$31,000 for 2017 and 2018 tax years. The Taxpayer stated he felt as though his lot was carrying an unnecessary tax burden with its higher valuation.
17. The Appraiser stated lot values in this neighborhood were set using vacant land sales. The Appraiser did not know the reason why the Douglas County Board of Equalization lowered the value of lot 32 to \$31,000 but said that was not the Assessor’s value. The Appraiser stated that lot 32 was being valued at \$74,900 for 2019.
18. The *Zabawa* decision has set a precedent for appeals such as this. “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.”<sup>9</sup> For the same reason, “To set the valuation of similarly situated property, i.e., comparables, at materially different levels, i.e., value per square foot, is by definition unreasonable and arbitrary, under the Nebraska Constitution.”<sup>10</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

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

<sup>10</sup> *Id.* at 228, 529, citing *Scribante v. Douglas County Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1998).

19. The Commission is convinced *Zabawa* is controlling law in this appeal. The County Board lowered the value of Lot 32 to \$31,000 or .90696 per square foot (.91 rounded). If the same per square foot amount were applied to the Subject Property, the resulting value would be \$32,435 (rounded).<sup>11</sup>
20. 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.
21. 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	\$32,435
<u>Improvements</u>	<u>\$ 0</u>
Total	\$32,435

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 January 24, 2020.

Signed and Sealed: January 24, 2020

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James D. Kuhn, Commissioner

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<sup>11</sup> 35,642 square foot x .91 = \$32,434.