

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

ROBERT E. GLASSON
APPELLANT,

CASE NO: 19R 0336

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 0624980001.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$85,600 for tax year 2019.
3. Robert E. Glasson (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$85,600 for tax year 2019.
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 June 6, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert Glasson was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (County Appraisers) were present for the County Board.

II. 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
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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

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

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer alleged that the value of the Subject Property should be reduced due to the height of the garage door which would not allow him to park his truck in the garage.
17. The County Board presented the PRF for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
18. The County Appraisers stated that the County Assessor's Office was aware of the height of the garage of the Subject Property which was typical of houses in the area built in the 1950's and 1960's. The County Appraisers stated that the height of the garage was a factor in the assessed value determined by the County Assessor.
19. The Taxpayer did not present any evidence which would allow the Commission to quantify the impact on the value of the Subject Property a different height of garage door would have on the value of the Subject Property.
20. The Taxpayer alleged that the value of the land component of the Subject Property should be reduced because the County

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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

21. The Taxpayer presented a printout from the County Assessors web site regarding the Miracle Hills Property showing an assessed value of \$100 for the land component.
22. The Taxpayer did not present the PRF for the Miracle Hills Property. Accordingly, the Commission cannot see the basis for the determination of assessed value for the Miracle Hills Property or compare its characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹⁰
23. The County Appraisers stated that the Miracle Hills Property is in a different part of town than the Subject Property and would not be comparable. Additionally, the County Appraisers stated that the value of the land component of the Miracle Hills Property is low due to a unique market condition not applicable to the Subject Property.
24. The Commission finds and determines that the Miracle Hills Property is not comparable to the Subject Property.
25. There is no information before the Commission to indicate that the value of the Miracle Hills Property was reduced by the County Board for tax year 2019.

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).

¹⁰ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on April 15, 2022, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

26. The Taxpayer offered the PRF of the property located next door to the Subject Property (the Next-Door Property) and alleged that the value of the land component of the Subject Property was not assessed uniformly and proportionally with this property.
27. The Next-Door Property has a larger lot than the Subject Property and a higher value attributed to its land component than the Subject Property.
28. There is no indication that the County Board adjusted the assessed valuation of the Next-Door Property for the 2019 assessment.
29. The Taxpayer alleges that the Subject Property and the Next-Door Property should have the same value per square foot.
30. The County Appraisers indicated that as lot size increases, the per-square-foot value of the land in those larger lots is lower than smaller lots. This determination by the County Assessor's Office is consistent with professional appraisal practice.
31. "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."¹¹
32. "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."¹²

¹¹ Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

¹² Appraisal Institute, *The Appraisal of Real Estate*, at 214 (13th ed. 2008).

33. The Taxpayer has failed to demonstrate that the County Board failed to assess the land components of comparable properties uniformly and proportionally.
34. The Taxpayer alleges that the market area determined by the County Assessor for the Subject Property is arbitrary or unreasonable.
35. The County Appraisers discussed the qualified sales that occurred in the economic area of the Subject Property in the Subject Property's market area and presented the assessment statistics to support the market area adjustments made to the valuation of the Subject Property.
36. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
37. The Taxpayer alleged that the decision of the County Board was arbitrary and unreasonable due to the decision of the Nebraska Supreme Court in *Cnty. of Douglas v Neb. Tax Equalization & Review Commission*, 296 Neb. 501, 894 N.W.2d 308 (2017) which concerned percentage adjustments to the 2016 values of subclasses of residential properties as part of the 2016 Statewide Equalization proceedings.
38. The assessed value for real property may be different from year to year according to the circumstances.¹³ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁴ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹⁵
39. The Taxpayer failed to argue how the decision of the Nebraska Supreme Court in *Cnty. of Douglas*¹⁶ applied to the 2019

¹³ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹⁴ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹⁵ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

¹⁶ *Cnty. of Douglas v Neb. Tax Equalization & Review Commission*, 296 Neb. 501, 894 N.W.2d 308 (2017)

valuation of the Subject Property.

40. The Commission finds that *Cnty. of Douglas*¹⁷ is not applicable in the present appeal.
41. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
42. The Taxpayer has not 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 affirmed.

IV. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$21,100
<u>Improvements</u>	<u>\$64,500</u>
Total	\$85,600
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 2019.

¹⁷ *Cnty. of Douglas v Neb. Tax Equalization & Review Commission*, 296 Neb. 501, 894 N.W.2d 308 (2017)

7. This Decision and Order is effective on April 25, 2023.

Signed and Sealed: April 25, 2023.



Steven A. Keetle, Commissioner