

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ronald M. Grasmick,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 19R 0398 & 20R 0401

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

Background

1. The Subject Property is a residential parcel improved with a 2,013 square foot raised ranch style residence, with a legal description of: Meadow Lane Park Lot 14 Block 6 Irreg., Omaha, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$240,500 for tax year 2019 and \$278,300 for tax year 2020.
3. Ronald M. Grasmick (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$202,800 for tax year 2019 and \$215,800 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$240,500 for tax year 2019 and \$278,300 for tax year 2020.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on March 29, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Ronald M. and Cindy Grasmick were present at the hearing.
8. Kurt Skradis 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. The 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 alleged that the assessed value of the improvements on the Subject Property was not uniform and proportionate with other comparable properties.
17. For both tax years, the Taxpayer presented the Property Record Files (PRF) for properties that he alleged were comparable to the Subject Property.
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
19. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹⁰
20. For tax year 2019, the Taxpayer presented the PRF for seven properties he alleged were comparable to the Subject Property. These PRFs demonstrate that differences between the assessed value of the Subject Property and the other seven properties are due to

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).

⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

¹⁰ Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

differences in their characteristics, such as style of construction, age, quality, condition, location, basement square footage, finished basement square footage, garage size, decks, patios, etc. The higher per square foot assessed value for the Subject Property as compared to the other parcels offered is due to the superior characteristics of the Subject Property, such as amount of finished basement, etc.

21. For tax year 2020, the Taxpayer presented the PRF for five properties that he alleged were comparable to the Subject Property. One of these properties was also presented regarding the 2019 tax year; four were properties not offered for prior assessment years. As with 2019, these PRFs demonstrate that differences between the assessed value of the Subject Property and the other properties are due to differences in their characteristics, and the higher per square foot assessed value for the Subject Property is due to the Subject Property's superior characteristics.
22. The Taxpayer alleged that the land component of the Subject Property was not equalized with the land component of other comparable properties on a per square foot basis.
23. The Taxpayer presented a table of land values for tax year 2019 that showed differences in per square foot values for several lots in the area of the Subject Property and throughout Douglas County.
24. The County Appraiser discussed how the residential lots presented were valued. Values were determined on a per lot basis, not a per square foot basis, to account for the characteristics of the land components necessary for constructing improvements. Additionally, some of the lots presented had values impacted by special circumstances such as locational or geological features causing damage to the improvements located on the lots.
25. Professionally accepted appraisal principles include the following: "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."¹¹
26. Additionally, "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
27. The information before the Commission shows that, accounting for special circumstances as described above, as the size of a land component increases, the value increases and the value per square foot decreases. The Taxpayer's land comparables do not demonstrate

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

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

that the value of the land component of the Subject Property is not valued uniformly and proportionally with that of other comparable properties.

28. The Taxpayer alleged that “flipped”¹³ houses in the neighborhood are unduly impacting the value of the properties in the area, including the Subject Property.
29. The Taxpayer presented a spreadsheet and other information regarding houses in the neighborhood that sold multiple times in a short period of time, including the PRF for several of these properties.
30. The County Appraiser discussed how the County Assessor’s office handled houses that appeared to be “flips.” When houses are flipped, the County Assessor’s office disqualifies those sales unless the condition of the property at the time of sale can be confirmed, as the condition and characteristics of these properties are very often changed between the initial sale and the subsequent sale due to the renovations performed. When the condition and characteristics of a “flip” can be confirmed after the renovations, the second sale will be used as a valid sale.
31. The County Board’s list of valid sales for 2019 indicated that the sales of two of the properties presented as “flips” were used as valid sales for tax year 2019. The County Board’s list of valid sales for 2020 indicated that none of the sales used as valid sales were of properties listed as “flips,” as all but one of these sales were too far from the assessment date to be in the window of valid sales used by the County Assessor. The county was aware of significant structural defects and condition factors with the remaining sale that made its purchase price and characteristics unrepresentative of the market, so the sale was not used as a valid sale.
32. The Taxpayer alleged that the residents’ uses of nearby properties for home businesses, parking of work vehicles, and storage of equipment, are negatively influencing the value of the Subject Property. The Taxpayer presented no information to quantify the impact of the neighbors’ use of their properties on the value of the Subject Property.
33. The Taxpayer alleged that the presence of a drug/alcohol rehabilitation house and criminal activity in the area negatively influenced the value of the Subject Property. The Taxpayer presented no information to quantify the impact of these conditions on the value of the Subject Property.
34. The Taxpayer alleges that the result of an order of the Commission from an appeal of the valuation of the Subject Property for tax year 2017 should control the valuation of the Subject Property for the tax years at issue in these appeals.
35. A decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year’s assessment is not relevant to a subsequent year’s valuation.¹⁴

¹³ Colloquially, a “flipped house” is a property purchased by an investor, who renovates all or part of the property and then re-sells the property for a higher price in a short amount of time.

¹⁴ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl’s Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

36. The Taxpayer's final allegation involves a request for equalized relief based on value of the land component of a nearby property, Parcel ID 1734311008 (the Lot Parcel), compared to the value of the land component of the Subject Property.
37. The land component of the Subject Property is 12,204 square feet; it was assessed at \$32,700 for tax years 2018, 2019 and 2020. It was originally assessed at \$32,700 for tax year 2017, and the County Board affirmed this value following a protest by the Taxpayer.
38. The land component of the Lot Parcel is 10,962 square feet. For tax year 2017, the Lot Parcel was originally assessed at \$189,100, consisting of \$32,500 for land and \$156,600 for improvements. Following a protest by the property owner, the County Board reduced the 2017 taxable value of the Lot Parcel to \$175,000, consisting of \$25,000 for land and \$150,000 for improvements.
39. The taxable value of the land component of the Lot Parcel has remained at \$25,000 since tax year 2017.
40. Because the land component of the Subject Property returned to \$32,700 after tax year 2017, while the land component of the Lot Parcel remained at \$25,000, the Taxpayer alleges that the dis-equalization caused by the actions of the County Board in tax year 2017 has carried forward to the 2019 and 2020 assessments.
41. The Taxpayer asserts that the Commission must grant relief by applying the principle of law found in the *Zabawa* determination of the Court and reducing the value of the Subject Property.¹⁵ There is no evidence that the County Board took any action on the Lot Parcel for tax years 2019 or 2020, distinguishing the present appeals from *Zabawa*.
42. The County Appraiser stated that, after the County Board's 2017 adjustment to the value of the Lot Parcel, that parcel was reviewed, and the condition rating lowered to Fair. The Lot Parcel was then reassessed for the 2018 assessment year based on characteristics including the Fair condition rating. As a result of the change in the characteristics, the overall valuation was increased from the value determined by the County Board for the 2017 tax year but decreased from the value determined by the County Assessor for the 2017 tax year.
43. The County Appraiser explained that the Lot Parcel was reviewed by the County Assessor's office, but because the relative percentage of the overall value allocated to the land component was the same for the Lot Parcel and the other parcels in the area, the land value of the Lot Parcel was not increased for 2018, 2019, or 2020.
44. The County Appraiser further stated that it is the total value, not the separate values of the land and improvement components, that matters, and that due to differences in condition and amenities between the Subject Property and the Lot Parcel, they are not comparable parcels for purposes of equalization.
45. The Subject Property and the Lot Parcel are located in the same subdivision. The land components are of similar size and both parcels are improved with raised ranch style residences.

¹⁵ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

46. The Taxpayer has presented evidence to demonstrate that, in tax year 2017, the lot values determined by the County Assessor were within \$200 dollars of each other to account for the slight difference in size between the two parcels.
47. No matter the differences in the value and characteristics of the improvements upon the parcels, the land component of the Subject Property and the land component of the Lot Parcel are highly comparable.
48. “To set the valuation of similarly situated property, i.e., comparables, at materially different levels, i.e., value per square foot, is by definition, arbitrary and unreasonable, under the Nebraska Constitution.”¹⁶
49. Lot values in the neighborhood of the Subject Property are not determined on a per square foot basis but rather a per lot value relative to size. The information before the Commission shows the assessed value of the Lot Parcel before and after it was reduced by the County Board in 2017.
50. Prior to the 2017 County Board action, the Subject Property had a land component value of \$32,700 and the comparable property had a land component value of \$32,500. Beginning in tax year 2018, the value of the land component of the Subject Property remained at \$32,700 and the value of the land component of the neighboring property had been reduced to \$25,000, or 76.9% of its prior value.
51. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$25,100,¹⁷ which, when added to the \$207,800 value of the improvement component, results in a total equalized value of \$232,900 for tax year 2019. When added to the \$245,600 value of the improvement component, this results in a total equalized value of \$270,700 for tax year 2020.
52. 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.
53. 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 years 2019 and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 25,100
<u>Improvements</u>	<u>\$207,800</u>
Total	\$232,900

¹⁶ *Scribante v. Douglas County Bd. of Equal.*, 588 N.W.2d 190, 199, 8 Neb.App. 25, 39 (1999).

¹⁷ \$32,700 land value x 76.9% = \$25,146 rounded to \$25,100.

3. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 25,100
<u>Improvements</u>	<u>\$245,600</u>
Total	\$270,700

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.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on November 24, 2021.

Signed and Sealed: November 24, 2021

Steven A. Keetle, Commissioner