

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

Paula A. Zabawa,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 19R 0554

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 2,871 square foot ranch-style residence, with a legal description of: Dillons Fairacres Add Lot 16 Block 12 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$443,800 for tax year 2019.
3. Paula A. Zabawa (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$343,739 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$443,800 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 May 18, 2021, at the Tax Equalization and Reviw Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraka, before Commissioner Steven A. Keetle.
7. Mike Zabawa was present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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 a determination of the County Board of Equalization is de novo.<sup>2</sup>

<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).

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 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 alleges that the assessed value of the Subject Property is incorrect because the basement square footage used by the County when determining the 2019 assessment is incorrect.
17. The County Appraisers stated that subsequent to the 2019 assessment and protest, the County Assessor’s office reviewed the blueprints of the Subject Property and determined that the actual square footage of the basement of the Subject Property should be 1,733 square feet. Based on this, the County Appraisers have a new opinion of value for tax year 2019: \$426,100, with the land value remaining \$76,100 and the improvement value being reduced to \$350,000.
18. The Taxpayer next alleges that the assessed value of the Subject Property is not equalized with the assessed value of a highly comparable property. The Taxpayer argues that the property located at 676 Dillion Dr. has been determined to be highly comparable to the Subject Property by the Nebraska Court of Appeals, and the Court’s ruling regarding the 2006 assessment in *Zabawa* should control.<sup>9</sup>

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

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

19. The facts of the present appeal are distinguishable from the Court of Appeals' previous ruling in *Zabawa*. The relief granted in the prior Court of Appeals ruling was based on action taken by the County Board reducing the value of 676 Dillion Dr. from the value set by the County Assessor while not reducing the assessed value of the Subject Property a proportionate amount. In the present appeal there is nothing to demonstrate that 676 Dillion Dr. protested its 2019 valuation to the County Board. Additionally, the ruling of the Court of Appeals was based on a finding that 676 Dillion Dr. and the Subject Property were "highly comparable," but the facts presented in this appeal do not support a finding that the Subject Property and 676 Dillion Dr. are comparable for tax year 2019.
20. The Taxpayer presented the Property Record File (PRF) for the Subject Property and the property at 676 Dillion Drive. These PRFs show that they are both ranch style properties built two years apart, but they have important distinguishing characteristics, including quality rating, basement size and finish, garage size, sunroom, and porches.
21. The County Appraiser stated that the property at 676 Dillion Dr. had been reviewed since the 2006 assessment year and its characteristics have changed. 676 Dillion Dr. was sold in 2009 and after that sale the property was remodeled, including the addition of a sunroom and an upgrade of the basement finish from minimal finish to full finish.
22. Most importantly, the property at 676 Dillion Dr has a quality rating of average while the Subject Property has a quality rating of good.<sup>10</sup>
23. Account notes from the County Assessor indicate that the County Assessor's office has made multiple requests to inspect the Subject Property since 2008, to review the quality and condition ratings and other characteristics of the Subject Property, but the Taxpayer has declined to allow an interior inspection of the Subject Property. These same account notes indicate that the County Assessor's office has reviewed information provided for County Board protests, such as the blueprints, and 1998 Multiple Listing Service (MLS) information for the Subject Property.
24. Other than the square footage of the basement of the Subject Property, the Taxpayer has not provided any information to demonstrate that the determinations of the County Assessor regarding the characteristics or amenities of the Subject Property or 676 Dillion are incorrect.
25. The County Board presented a table of recent sales in the same neighborhood that shows the median sales price for good quality homes is higher than that of average quality homes. This finding is supported by the appraisal principle that, generally, the base construction cost per square foot increases as the quality of the structure increases and decreases as the size increases.<sup>11</sup>
26. Further, the cost per square foot shown on the PRF for the Subject Property (\$119.89) and 676 Dillion Dr. (\$89.07) are supported by the cost per square for found in the

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<sup>10</sup> In 2006, both properties had quality rating of good. See *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 226, 757 N.W.2d 522, 527 (2008).

<sup>11</sup> Marshall & Swift/Boeckh LLC, *Residential Cost Handbook*,(12/2009 -12/2010) at page Avg-19-21

Marshall and Swift Residential Cost Manual for good quality (\$118.00) and average quality (\$89).<sup>12</sup>

27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>13</sup>
28. “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.”<sup>14</sup>
29. The Commission finds and determines that the Subject Property and the property at 676 Dillon Dr. are not comparable properties. Differences in the determination of their assessed values as shown on the PRFs are due to differences in their characteristics, primarily the quality rating, and amenities.
30. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
31. The Taxpayer asserts that the value of the Subject Property should be reduced due to flooding of the Subject Property caused by the storm sewers in the area.
32. The Taxpayer presented a statement from the neighbor behind the Subject Property that indicted water from his property flowed onto the Subject Property due to storm sewer backups in 1986, 2008 and May 2019.<sup>15</sup>
33. The Taxpayer stated that he did not know what the impact of the water flow issue would be on the Subject Property but offered a claim he made with the City of Omaha for \$16,000 in damages caused by the 2019 flooding. However, this statement indicted that portions of those costs were for removal and replacement of personal property and equipment as well as re-grading to allow unimpeded water flow.
34. The Commission cannot determine the impact of the water flow issues discussed by the Taxpayer on the value of the Subject Property.
35. Based on the information presented to it, the Commission finds and determines that the actual value of the Subject Property for tax year 2019 is \$426,100, with the land value at \$76,100 and the improvement value \$350,000.
36. 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.
37. 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.

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<sup>12</sup> Marshall & Swift/Boeckh LLC, *Residential Cost Handbook*, (12/2018) at page Good-15 and page Avg-19.

<sup>13</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>14</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>15</sup> These dates are significantly before and after the 2019 assessment date of January 1, 2019.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 76,100
<u>Improvements</u>	<u>\$350,000</u>
Total	\$426,100

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.
7. This Decision and Order is effective on December 20, 2021.

Signed and Sealed: December 20, 2021

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Steven A. Keetle, Commissioner