

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

RYAN DURANT
APPELLANT,

CASE NO: 20R 0319

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 108480010.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$487,200 for tax year 2020.
3. Ryan Durant (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 \$487,200 for tax year 2020.
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 11, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Ryan Durant 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 assessed value of the land component of the Subject Property is not equalized with the land value of comparable properties after adjustment by the County Board.
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 Taxpayer presented the PRF for the Subject Property and two properties located to the south of the Subject Property (the Land Comparables). The Taxpayer presented a map of these three properties showing that they are located in a row with one property being between and directly adjacent to the other two. The Taxpayer further stated that these three properties have similar topography to each other.
19. The Taxpayer also offered the valuation history of the Subject Property and the two other properties for tax year 2020. The valuation histories show that all three properties protested their valuations to the County Board for tax year 2020.

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).

20. The valuation history shows that prior to County Board actions for 2020, the Subject Property and the Land Comparables all had a value of \$60,000 per acre on their land component. This is consistent with the account notes in the PRF of the Subject Property stating that land values in the area are being set at \$60,000 per acre.
21. After County Board action the value of the land component of the Subject Property remained at \$60,000 per acre and the value of the land component of the neighboring properties had been reduced to 36.7% of their prior per acre valuations.
22. The County Appraisers stated that the County Board actions for the Land Comparable properties were based on total valuations not just the per acre value of the land component.
23. The PRFs for the Land Comparables and the Subject Property contain Non-Commercial Cost Details that value the improvement components of each parcel after County Board adjustment that account for differences in their characteristics such as style, age, quality, condition, size, and other amenities and outbuildings. In other words, the value of the improvements on each of the three properties shown in the PRFs presented is valued separately from their land components.
24. In *Zabawa v. Douglas County Board of Equalization*, the Nebraska Court of Appeals held that “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.”⁹ The Court determined that the remedy was to reduce the assessed valuation of Zabawa’s property to the same percentage of value as that of the comparable property.¹⁰
25. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to

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

¹⁰ *Id.*, at 229, 529.

\$66,100,¹¹ which, when added to the \$307,200 value of the improvement component, would result in a total equalized value of \$373,300 for tax year 2020.

26. 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.
27. 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.

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 2020 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 66,100
<u>Improvements</u>	<u>\$307,200</u>
Total	\$373,300
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 2020.

¹¹ \$180,000 x 36.7% = \$66,060 rounded to \$66,100.

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

Signed and Sealed: April 25, 2023



Steven A. Keetle, Commissioner