

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

NATHANIEL L. BARNHILL
APPELLANT,

CASE NO: 20R 0399

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 2115050000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$224,200 for tax year 2020.
3. Nathaniel L. Barnhill (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 \$224,200 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 March 15, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
7. Nathan Barnhill 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 Subject Property was not equalized with comparable properties.
17. The Nebraska Court of Appeals held in *Scribante* that "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."⁹
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
19. The Taxpayer presented the Property Record File (PRF) for the Subject Property and nine other comparable properties located near the Subject Property.¹¹
20. The County Board presented the PRF for the Subject Property. The PRFs contain 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

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).

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

¹¹ The *Scribante* analysis that follows excludes one of the comparable properties (the Lafayette St Property) had its final assessed value reduced from the initial value by the County Board and that adjusted value will be discussed later in this order.

- of the characteristics of residential properties in the area, including the Subject Property for each of the tax years at issue.
21. The PRF indicates that the market area in which the Subject Property is located was reappraised for tax year 2020. As part of that reappraisal a land study was conducted, and the results of that study were presented by the County Board.
 22. The land study and the PRF for the comparable properties show that as the land sized increase the price per square foot decreased but the total land valuations increased, which is consistent with professionally accepted appraisal techniques.
 23. “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.”¹²
 24. The PRFs further show that the assessed values of the comparable properties do have differences based on their characteristics. Properties that have higher quality of construction ratings have higher per square foot base values and older properties or properties with lower condition ratings have higher depreciation applied. Additionally, value for amenities such as fireplaces, basement finish, patios and decks explain the differences in the per square foot value between the Subject Property and the comparable properties presented.
 25. The information presented to the Commission demonstrates that the higher assessed value for the Subject Property, when compared to the other properties offered by the Taxpayer, is explained by the differences in their characteristics.

¹² Appraisal Institute, *The Appraisal of Real Estate* at 198 (14th ed. 2013)

26. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction of assessed value under the court's determination in *Scribante*.
27. As noted earlier one of the comparable properties had its value adjusted by the County Board (the Lafayette St. Property). The Taxpayer presented the Douglas County Board of Equalization Summary Form for 2020 for the Lafayette St. Property that showed that the protest did not receive coordinator review and that the County Board therefore set the Lafayette St Property's 2020 valuation as the same valuation set for the property in 2019 value without review.
28. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹³ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁴
29. If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that the valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment."¹⁵ "There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity."¹⁶

¹³ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁴ *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

¹⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁶ *Id.* at 673, 94 N.W.2d at 50.

30. “By adjudicating tax protests in greatly disparate amounts...the Board failed to fulfill its ‘plain legal duty’ to equalize property valuations.”¹⁷
31. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁸
32. The Taxpayer has shown that the 2020 value of the Subject Property was not equalized with the assessed value of other properties reviewed and adjusted by the Board of Equalization.
33. Because the County Board failed in its duty to equalize property valuations by reducing the assessed value of the Lafayette St. Property due solely to a lack of coordinator review, the Commission finds that for tax year 2020, the equalized value of the Subject Property is the same as the 2019 value of \$163,500.
34. The Taxpayer has/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.
35. 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 reversed.

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

¹⁸ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

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

Land	\$ 800
<u>Improvements</u>	<u>\$162,700</u>
Total	\$163,500

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.
7. This Decision and Order is effective on May 17, 2023.

Signed and Sealed: May 17, 2023



Steven A. Keetle, Commissioner