

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

DIANE D. MCGILL,
APPELLANT,

CASE NO: 20R 0614

V.

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

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 537780112.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$804,700 for tax year 2020.
3. Diane D. McGill (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 \$804,700 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 October 20, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Robert and Diane McGill were present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (the 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 Subject Property is a residential parcel improved with a 4,293 square foot one and one-half story residence constructed in 2002. The Subject Property has a quality rating of very good and a condition rating of good and backs up to a green space.
17. The Taxpayer alleged that the assessed value of the Subject Property was not supported by recent comparable sales.
18. The County Board presented the Property Record File (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.
19. The PRF indicates that the market area in which the Subject property is located was reappraised for tax year 2020.
20. The Taxpayer presented a table of sales of one and one-half story properties in the same market area as the Subject Property.
21. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹

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

22. “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
23. The Taxpayer did not present the PRFs for the properties listed on the sales chart. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their 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.¹¹
24. The table presented by the Taxpayer does not show when the properties sold or what the sales price for the properties was.
25. The information contained in the table shows that the Subject Property’s lot and the improvements are larger than any of the properties sold.
26. The Taxpayer has not demonstrated that the assessed value of the Subject Property is too high based on recent sales.
27. The Taxpayer alleged that the assessed value should be reduced due to its location along a section of South 179th Terrace that is a frontage road off 180th street, a major north-south road in Omaha.
28. The County Appraisers stated that the County Assessor’s office had analyzed sales that occurred on the same street as the Subject Property that were adjacent to 180th street or the frontage road and those that were not adjacent to 180th street or

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

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 5, 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.*

- the frontage road and found no measurable difference in the sales prices due to the location of the 180th street traffic.
29. The Taxpayer has not demonstrated that the assessed value of the Subject Property should be reduced due to its proximity to 180th street or traffic.
 30. The Taxpayer alleged that the assessed value of the land component of the Subject Property was not equalized with the assessed value of the land component of other comparable properties.
 31. The Taxpayer discussed the characteristics of the land component of the Subject Property and a property two lots from the Subject Property (the Second Parcel).
 32. The Subject Property and the Second Parcel have similar topography, are both located on South 179th Terrace, and both back up to the same green space. The Subject Property is 0.68 acres, and the Second Property is 0.76 acres.
 33. The Taxpayer stated that after the 2020 reappraisal of the market area by the County Assessor the assessed value of the land component of the Subject Property was \$222,400 and the assessed value of the land component of the Second Parcel was \$255,000.
 34. The County Appraisers stated that the Subject Property and the Second Parcel were valued using the same land valuation model, the difference in their assessed values being due to the difference in size between the two parcels.
 35. The Taxpayer stated that the assessed value of the Subject Property and the Second Parcel were both protested to the County Board, and both requested a land valuation of \$150,000 for tax year 2020.
 36. The Taxpayer stated that the County Board reduced the value of the land component of the Second Parcel but didn't reduce the land component of the Subject Property as recommended by the referee who heard the protest.

37. The Taxpayer presented information from the County Assessor's web site that shows that the land component of the Second Parcel was reduced to \$150,000 or 58.8% of its value determined by the County Assessor's office, while the value of the land component of the Subject Property remained at \$222,400.
38. 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."¹² 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.¹³
39. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$130,800,¹⁴
40. The Commission finds that the equalized value of the Subject Property for tax year 2020 is \$713,100, with a value for the land component of \$130,800 and a value for the improvements of \$582,300.
41. 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.
42. 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.

¹² *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹³ *Id.*, at 229, 529.

¹⁴ $\$222,400 \times 58.8\% = \$130,771$ rounded to \$130,800.

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	\$130,800
<u>Improvements</u>	<u>\$582,300</u>
Total	\$713,100

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 2020.
7. This Decision and Order is effective on October 6, 2023.

Signed and Sealed: October 6, 2023



Steven A. Keetle, Commissioner