

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

RONALD M. GRASMICK,  
APPELLANT,

CASE NO: 21R 0505

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 consists of an improved residential parcel in Douglas County, parcel number 1734311206.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$278,300 for tax year 2021.
3. Ronald M. Grasmick (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 \$235,000 for tax year 2021.
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 February 24, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Ron and Cindy Grasmick 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<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, 759 N.W.2d 464, 473 (2009).

<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.* at 283-84.

<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, 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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 2,013 square foot raised ranch style residence constructed in 1965. The Subject Property has quality and condition ratings of average.
17. The Taxpayer alleged that the Subject Property is being treated as a ranch style property when it is a raised ranch style property.
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, including the sale 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 last reappraised for tax year 2020 and that those values were carried forward to the tax year at issue.
20. The PRF indicates that the Subject Property is a raised ranch style property and that it was assessed as a raised ranch style property by the County Assessor's office.

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. The Taxpayer alleged that the result of prior orders of the Commission should control regarding the valuation of the land component of the Subject Property.
22. 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.<sup>9</sup> The Commission must make its determination based on the information presented at the current years hearing.
23. The assessed value for real property may be different from year to year according to the circumstances.<sup>10</sup>
24. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>11</sup>
25. The Taxpayer alleged that the action of the County Board failed to equalize the assessed value of the Subject Property and that the value determined by the County Board should be further reduced to reflect the equalized value of the land component.
26. The County Appraisers also alleged that the action of the County Board failed to equalize the assessed value of the Subject Property.
27. The County Appraisers alleged that the value determined by the County Assessor prior to County Board action was equalized with other comparable properties, but that the allocation between land and improvements should be adjusted to reflect the equalized land value.
28. The report of County Board action show that the referee and referee coordinator both recommended that the appeal be dismissed and that the County Assessor value be upheld.
29. The Taxpayer presented a recording and transcription of the County Board hearing before the full County Board of

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<sup>9</sup> *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).

<sup>10</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat §77-1301(Reissue 2018).

Equalization regarding the 2021 assessment of the Subject Property. At this hearing the County Board did not accept the initial recommendation and made a motion to reduce the assessed value of the Subject Property. The discussion and motion made by the County Board at this hearing indicate the motion was made based on a concern that the reduction in the land component value of a neighborhood property resulted in an assessed value for the Subject Property that was not equalized. The County Board however, indicated that it was unwilling to adjust the land value to achieve equalization and instead adjusted the value of the improvements to address the Taxpayers allegation that the values were not equalized.

30. Both Parties alleged that the action of the County Board was not based on sufficient competent evidence and was unreasonable.
31. The Commission finds that the action of the County Board adjusting the assessed value of the Subject Property was not based on sufficient competent evidence to justify its actions and was unreasonable.
32. The Taxpayer alleged that the value of the Subject Property determined by the County Board should be further reduced to reflect the equalized value of the land component.
33. The County Appraisers alleged that the value of the Subject Property determined by County Board was below its actual value and below its equalized value. The County Appraisers further alleged that the total assessed value prior to County Board action was equalized with other comparable properties, but that the allocation between land and improvements should be adjusted to reflect the equalized land value.
34. In addition to the 2021 PRF for the Subject Property the Taxpayer presented the 2021 PRF for the nearby property, Parcel ID 1734311008 (the Lot Parcel), that the Taxpayer alleged had a land component value that was not equalized with the land component of the Subject Property.

35. The 2021 PRF's presented show that the value of the improvements on both the Subject Property and the Lot Parcel were determined using the cost approach to value with a land value added to reach the full assessed value.
36. This cost approach methodology is consistent with professionally accepted mass appraisal methods which require land to be valued as if vacant and available for development at its highest and best use and then added to the value of the improvements.<sup>12</sup>
37. The land component of the Subject Property is 12,204 square feet; it was assessed at \$32,700 in 2017 and it has remained at that value through the 2021 assessment.
38. The land component of the Lot Parcel is 10,962 square feet. For tax year 2017, the land component of the Lot Parcel was originally assessed at \$32,500. Following a protest by the property owner, the County Board reduced the 2017 assessed value of the land component of the Lot Parcel to \$25,000 and it has remained at that value through the 2021 assessment.
39. Because the land component of the Subject Property remained at \$32,700, 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 2021 assessment.
40. 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.<sup>13</sup> There is no evidence that the County Board took any action on the Lot Parcel for tax year 2021, distinguishing the present appeals from *Zabawa*.
41. The Subject Property and the Lot Parcel are located in the same subdivision. The land components of both parcels are of similar

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<sup>12</sup> See, International Association of Assessing Officers, *Property Assessment Valuation* 230 (3rd ed. 2010); see Appraisal Institute, *The Appraisal of Real Estate* 532-33 (15th ed. 2020).

<sup>13</sup> *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

size and both parcels are improved with raised ranch style residences.

42. 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.
43. 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.
44. "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."<sup>14</sup>
45. 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.
46. 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. The value of the land component of the Subject Property has 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.
47. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$25,100,<sup>15</sup> for tax year 2021.
48. The PRF for the Subject Property and the Lot Parcel show that the market area in which they are both located was reappraised for tax year 2020, and new values for their improvements were

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<sup>14</sup> *Scribante v. Douglas County Bd. of Equal.*, 588 N.W.2d 190, 199, 8 Neb.App. 25, 39 (1999).

<sup>15</sup> \$32,700 land value x 76.9% = \$25,146 rounded to \$25,100.

determined using the cost approach, and that these values were carried over to the 2021 tax year.

49. The County Board presented the sales and sales ratio studies to show that these values determined by the County Assessor's Office for the Subject Property and the Lot Parcel, although different based on their different characteristics, represented actual or market values for both properties for the 2021 tax year.
50. As noted earlier in these findings, the County Board reduced the assessed value of the improvement component of the Subject Property from \$245,600 to \$202,300 or 82.3% of its actual or market value for tax year 2021. There is no evidence that the County Board took any action on the Lot Parcel for tax year 2021.
51. Residential real property in Nebraska shall be valued at its actual value.<sup>16</sup>
52. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>17</sup>
53. The Commission finds that the assessed value of the improvement component of the Subject Property determined by the County Board is not actual or fair market value and it not equalized with other taxable properties in the market area.
54. The Commission finds that the assessed value of the improvement component of the Subject Property for tax year 2021 is \$245,600.

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<sup>16</sup> Neb. Rev. Stat. § 77-201 (Reissue 2018).

<sup>17</sup> *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013); *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 577, 471 N.W.2d 734, 742 (1991).



55. 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.
56. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board are arbitrary or unreasonable and the decisions 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 2021 is vacated and reversed.
2. The taxable value of the Subject Property for tax years 2021 and is:

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

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 2021.

7. This Decision and Order is effective on February 21, 2024.

Signed and Sealed: February 21, 2024



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Steven A. Keetle, Commissioner