

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

FRED E. MCLOUTH
APPELLANT,

CASE NO: 22R 0693

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 2225570435.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$648,400 for tax year 2022.
3. Fred E. McLouth (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 \$648,400 for tax year 2022.
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 June 13, 2023, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Fred McLouth was present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) was 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 did not present information regarding the value of the improvements on the Subject Property.
17. 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.
18. The Taxpayer alleged that the value of the Subject Property should be reduced because it is zoned for agricultural use.
19. The Subject Property is improved with a 3,812 square foot two story residence and a detached garage.
20. The Taxpayer stated that the Subject Property is not used for commercial agricultural or horticultural production.
21. The Subject Property does not meet the requirements to be assessed as agricultural or horticultural land.⁹
22. The Taxpayer stated that he did not apply for special valuation status for the Subject Property.¹⁰

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 Neb. Rev. Stat. § 77-1359 (Reissue 2018).

¹⁰ See, Neb. Rev. Stat. § 77-1345 (Reissue 2018).

23. The Taxpayer alleged that the value of the land component of the Subject Property was not equalized with the value of the land component of other comparable properties.
24. The Taxpayer presented information on the valuation of the land components of seven surrounding properties.
25. One of the properties is agricultural and horticultural land receiving special valuation and therefore in a separate class of property and not comparable to the Subject Property.¹¹
26. One of the remaining parcels had an inferior location, was not buildable, and had access issues, and would not be comparable to the Subject Property.
27. Two of the parcels were larger than 5 acres in size and were given a discount for excess acres based on market sales and would therefore not be comparable to the Subject Property.
28. The remaining five parcels are all adjacent to the Subject Property and have similar use, topography, and characteristics.
29. The Commission finds that the land component of these five remaining parcels is comparable.
30. The four of these remaining parcels, which includes the Subject Property are valued at \$60,000 per acre, and one is valued at \$32,600 per acre.
31. The County Appraiser and Taxpayer both stated the parcel valued at \$32,600 had been valued at \$60,000 per acre but protested its assessment to the County Board and had its value reduced by the County Board.
32. 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

¹¹ See, Neb. Rev. Stat. §77-1359 (Reissue 2018)

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

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

33. The Commission finds and determines that the assessed value of the land component of the Subject Property should be reduced to \$78,200¹⁴ which, when added to the \$504,400 value of the improvement component, would result in a total equalized value of \$582,600 for tax year 2022.
34. 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.
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 2022 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 78,200
<u>Improvements</u>	<u>\$504,400</u>
Total	\$582,600

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).

¹³ Id., at 229, 529.

¹⁴ \$32,600 x 2.4 acres = \$78,240 rounded to \$78,200.

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 2022.
7. This Decision and Order is effective on June 23, 2023.

Signed and Sealed: June 23, 2023



Steven A. Keetle, Commissioner