

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

Brian J. Ault,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 17R 0131

Decision and Order Affirming the  
Determination of the Sarpy  
County Board of Equalization

Background

1. The Subject Property is a 3,190 square foot one and one-half story residential parcel, with a legal description of: Lot 7 Caincrest (5.23 AC), Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$448,287 for tax year 2017.
3. Brian J. Ault (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$297,338 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$448,287 for tax year 2017.
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 30, 2018, at the Omaha State Office Building, 1313 Farnam St., Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Brian J. Ault was present at the hearing.
8. Martin Becker and Jackie Morehead from the Sarpy County Assessor's Office were present for the County Board.

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 the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<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 (2009).

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>
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>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the assessed value of the Subject Property has increased by a greater percentage than similar properties from the 2010 tax year until the current tax year.
17. Additionally, the Taxpayer alleged that the assessed value of the Subject Property was too high when compared to other properties in his subdivision.
18. The Taxpayer indicated that the improvements on the Subject Property were built in 2010 and the Property Record File (PRF) for the Subject Property indicates that a building permit for the dwelling on the Subject Property was taken out in June of 2009. This combined with an approximate \$58,000 increase in the assessed value of the improvements on the Subject Property from tax year 2010 to 2011, would indicate that the 2010 assessed value was a partial value for a dwelling that was not complete as of January 1, 2010.

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<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<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, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

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

19. Additionally, the PRF and other information presented to the Commission indicate that additions have been made to the Subject Property since the initial construction, including decks, expansion of the attached garage, and finishing of the second floor living space.
20. The Taxpayer presented the history of the assessed values of the properties in the Subject Property's subdivision and their square footage. The Taxpayer did not present the PRF for any of the properties in the subdivision aside from the Subject Property.
21. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>10</sup> For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
22. The information before the Commission indicates that the Subject Property has changed since tax year 2010 but there is no information regarding the characteristics of or any changes to the other properties in the Subdivision over the years.
23. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
24. "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."<sup>12</sup>
25. Without the PRF for the other properties in the Subject Properties subdivision, the Commission is unable to determine if they are comparable to the Subject Property or if any adjustments, for quality, condition, finished basements, fireplaces, etc. would account for any differences or features to make the other properties comparable to the Subject Property.
26. The County Board presented the PRF for six comparable properties in Sarpy County that sold between October 1, 2014 and September 30, 2016.
27. The information presented regarding the County Board's comparable properties indicate that the differences in their assessments as compared to the Subject Property's assessment are attributable to differences in the properties.
28. The County also presented a listing of all rural acreage and improved farm site sales that occurred in Sarpy county that sold between October 1, 2014 and September 30, 2016, and its rural land valuation model to support its determination of value for the Subject Property.
29. The Taxpayer alleged that the assessed value of the Subject Property should be lower due to the fact that the current insurance policy limit on the Subject Property is less than the assessed value.

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *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).

<sup>11</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>12</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

30. The Taxpayer presented a portion of a claim summary for hail damage to the Subject Property which indicates that there is a current policy limit of \$362,000 for the dwelling and \$36,200 for other structures, for total policy limits of \$398,200 on the Subject Property. The Commission does not have the information to indicate what is covered by the Taxpayer's policy, what the policy indicates is included in the replacement cost, or what the policy considers other structures.
31. The assessed value of the improvements located on the Subject Property as determined by the County Board is \$386,906.
32. The Taxpayer 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.
33. The Taxpayer has not 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 affirmed.

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 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 61,381
<u>Improvements</u>	<u>\$386,906</u>
Total	\$448,287

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2017.
7. This Decision and Order is effective on May 31, 2019.

Signed and Sealed: May 31, 2019

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Steven A. Keetle, Commissioner