

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

Maureen F. Larsen,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 17R 0224

Decision and Order

**For the Appellant:**  
Maureen F. Larsen,  
Pro Se

**For the Appellee:**  
Andrea Gosnold-Parker,  
Deputy Sarpy County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Sarpy County. The parcel is improved with a 3,165 square foot home. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 6.

**II. PROCEDURAL HISTORY**

The Sarpy County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$545,157 for tax year 2017. Maureen F. Larsen (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessed valuation of \$384,981.<sup>1</sup> The County Board determined that the taxable value of the Subject Property for tax year 2017 was \$545,157.<sup>2</sup>

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). The Commission held a hearing on October 31, 2018. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. At the hearing before the Commission, the parties stipulated to the

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<sup>1</sup> Ex 5:1

<sup>2</sup> Ex 1.

receipt of Exhibits 1 through 45 submitted by the County Board; no witnesses were called and no testimony was presented at the hearing.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>3</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>4</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>5</sup>

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>6</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>

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>8</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>9</sup>

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<sup>3</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).

<sup>4</sup> *Brenner* at 283, 811.

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</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>9</sup> *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>10</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>11</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>12</sup>

## IV. LAW

### A. Valuation

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>13</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>14</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>15</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>16</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>17</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>18</sup>

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<sup>10</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>13</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>14</sup> *Id.*

<sup>15</sup> *Omaha Country Club* at 180, 829.

<sup>16</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

<sup>17</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>18</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its actual value. Neb. Rev. Stat. §77-201(2) (Reissue 2018). Agricultural land and horticultural land means a parcel of land which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>19</sup>

“Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.”<sup>20</sup>

Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

- (a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and
- (b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production shall be defined as agricultural land or horticultural land.<sup>21</sup>

## A. Equalization

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by [the Nebraska] Constitution.”<sup>22</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>23</sup> 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>24</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>25</sup> Uniformity requires that whatever methods are used to determine actual or taxable

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<sup>19</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

<sup>20</sup> Neb. Rev. Stat. §77-132 (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. §77-1359 (2) (Reissue 2018).

<sup>22</sup> *Neb. Const.*, Art. VIII, §1.

<sup>23</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>24</sup> *MAPCO; Cabela's Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>25</sup> *Cabela's Inc.*

value for various classifications of real property that the results be correlated to show uniformity.<sup>26</sup> 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.<sup>27</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>28</sup> 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.”<sup>29</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>30</sup>

## V. ANALYSIS

The Subject Property is a 19.98<sup>31</sup> acre rural property located in southwest Sarpy County. The Subject Property is improved with a 3,165 square foot one and one-half story residence constructed in 2004, a 9,000 square foot pole building, and two loafing sheds. The residence has an attached garage, swimming pool, deck, and porches. The Subject Property has a quality rating of Good and a condition rating of Average. The Assessor’s office has determined that 17.08 acres of the property are agricultural or horticultural land that those acres have been granted special valuation status,<sup>32</sup> and the remaining 2.9 acres are Home Site or Farm Site acres. The Subject Property is not owned or operated in conjunction with any other agricultural or horticultural parcel or operation.

At the hearing before the Commission the parties stipulated to the receipt of exhibits 1 through 45 and these exhibits were received into the record before the Commission. The

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<sup>26</sup> *Banner Cty. v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>27</sup> *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>28</sup> *First Nat. Bank & Trust Co. v. Cty. of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>29</sup> *Newman v. Cty. of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>30</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>31</sup> In some parts of the record this parcel size is listed as 19.99 acres. The parties did not contest the valuation of the agricultural or horticultural special valuation acres which would include the additional .01 acre of land. The Home Site and Site acres whose valuations are contested are consistently listed as 2.9 acres; therefore, the Commission will utilize 19.98 acres as the total acre count for purposes of these findings and orders.

<sup>32</sup> The Taxpayer did not provide any evidence that Special Valuation status was applied for or granted but the status of portions of the property as agricultural or horticultural receiving special valuation was not challenged and will not be reviewed by the Commission.

Taxpayer submitted the matter without any calling any witnesses or presenting any argument to the Commission, relying on the exhibits received by stipulation which included a document entitled “Reasons for requested value change” and referred to as the “Taxpayer’s brief” by the parties.<sup>33</sup> The County Board submitted the matter on the stipulated exhibits and argument presented to the Commission, without calling any additional witnesses. The parties in their pre-hearing conference report agreed that the unresolved issues before the Commission were, as asserted by the Taxpayer: 1) The method of home site first acre valuation results in double taxation for the landowner and is not uniform nor proportionate, 2) There is a difference in the method of taxation between Sarpy County and Douglas and Cass Counties, and the Sarpy properties that lie within overlapping Gretna, Springfield, and Millard School Districts bear a disproportionate burden of taxes, 3) Comparable home sites in adjacent Cass and Douglas County should be used to determined actual land value for purposes of assessments, 4) The properties used for comparative purposes are of a higher quality than the Subject Property, and 5) The valuation of the pole building is arbitrary and unreasonable. These issues are very similar but not the same as the issues argued in the Taxpayer’s brief which alleges that: 1) the method used to assess the Subject Property results in disproportionate and unconstitutional valuations for rural landowners, 2) Comparable home sites in adjacent Cass County and Douglas County should be used to determine actual land value for purposes of assessment, 3) The value of the pole barn on the Subject Property has been depreciating since it was erected, 4) The assessor personally visited the Subject Property and lowered the classification from the top level to “good” but continues to assess the value of the improvements using homes with higher classifications, and 5) the assessor’s “gotcha” approach to the discussion of the impact of a pool on the valuation of the Subject Property.

#### **A. Valuation of First Acre**

The Taxpayer’s brief takes exception to the difference in per acre assessed values between the first acre Home Site and the remaining acres on the Subject Property; for the most part this has to do with the methodology that the Assessor’s office used to determine site values, particularly the first acre Home Site values. The Subject Property is a single 19.98 acre parcel which contains two different types of land, 17.08 acres of agricultural and horticultural land

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<sup>33</sup> See, Ex 3:2-45 and E5:2-50

subject to special valuation, and 2.9 acres of non-agricultural and horticultural land associated with the buildings or other enclosed structures. Under Nebraska law agricultural land and horticultural land does not include any land directly associated with any building or enclosed structure.<sup>34</sup> Agricultural land and horticultural land is a separate and distinct class of real property for purposes of assessment and the assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but shall be uniform and proportionate within the class of agricultural land and horticultural land.<sup>35</sup> The agricultural and horticultural land on the Subject Property is subject to special valuation, which in Sarpy County means that the Assessor has made a determination that all sales of agricultural land and horticultural land in the County are influenced by non-agricultural or horticultural uses.<sup>36</sup> Because this determination has been made, the assessed value of agricultural and horticultural land in Sarpy County is established based on sales from counties that have been determined not to have been influenced by non-agricultural or horticultural uses. The County Board presented the methodology that the Assessor uses to determine special valuation values for agricultural and horticultural land.<sup>37</sup>

When land that was previously classified as agricultural or horticultural land is associated with a house or other enclosed structure (i.e. a house or other enclosed structure is built upon the land) that land is no longer classified as agricultural or horticultural land.<sup>38</sup> The Rules and Regulations of the Department of Revenue require that when there are other uses of land on an agricultural or horticultural parcel that are not classified as agricultural or horticultural uses a market study needs to be conducted by the assessor to determine the proper assessment of the land.<sup>39</sup> The County Board presented the Assessor's 2017 Rural Land Model and the 2017 Farm Home Site Model which were prepared to determine the proper assessed values for Farm Home Sites, Farm Sites and other rural site acres that are not agricultural or horticultural land.<sup>40</sup> The County Board also offered the Assessor's 2017 Rural Neighborhood Map, Standard Operating Procedure, 2017 Values and Adjustments Applied within Various Rural Market Areas, and Rural

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<sup>34</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

<sup>35</sup> Neb. Rev. Stat. §77-1359 (Reissue 2018)

<sup>36</sup> See, Neb. Rev. Stat. §77-1343 (Reissue 2018)

<sup>37</sup> See, E17, E18

<sup>38</sup> Neb. Rev. Stat. §77-1359 (1) (Reissue 2018).

<sup>39</sup> Title 350 Neb. Admin. Code ch. 14 §005.01 (3/09)

<sup>40</sup> E15 & E16

Acreage-Land Sales Report, to support the Assessor's market studies for determining rural site values.<sup>41</sup> To support the assessment of the land component of the Subject Property, the County Board also offered the Property Record Files (PRF) for seven comparable unimproved parcel sales as well as a map of the locations of these sales relative to the Subject Property.<sup>42</sup>

The Taxpayer alleges that using one method to value acres of agricultural and horticultural land subject to special valuation and a different method to value non-agricultural or horticultural Rural Home sites, Farm Home sites, and Farm Sites results in values that are disproportionate. Under Nebraska law, however, agricultural and horticultural land subject to special valuation and land associated with a building or other enclosed structure are separate and distinct classes of real property for purposes of assessment, and the assessed value of agricultural land and horticultural land *shall not* be uniform and proportionate.<sup>43</sup> The Taxpayer is requesting that these two separate and distinct classes be assessed uniformly and proportionally to each other while the law mandates that they shall not be uniform and proportionate. The County is assessing the land on which the house and outbuilding are located as rural residential property at 100% of market value and the agricultural and horticultural land subject to special value at 75% of their special value as the law requires.

Under the 2017 assessment methodology presented by the County Board and used in Sarpy County to value Farm Home Sites, Farm Sites, and other rural site acres (Site Acres), the per acre values for the land associated with a building or other enclosed structure is a result of the classification of the land as a Rural Home site or Farm Home site and does not include any value for the well or septic system as alleged by the Taxpayer. All of the information regarding the valuation of Site Acres in Sarpy County show land that had already been improved with a well or septic system as the other improvements were being constructed. The PRFs do not add a line item for the value of a well or septic system or, for that matter, a connection to a municipal water or sewer system; these items are necessary to have a habitable residence.

The Taxpayer offered partial valuation information from the Assessor's web site and indicated that it demonstrated the value of the land component decreasing when improvements

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<sup>41</sup> E11, E12, E13, and E14

<sup>42</sup> E19-E26.

<sup>43</sup> Neb. Rev. Stat. §77-1359 (Reissue 2018)



were made.<sup>44</sup> This information pertaining to rural properties contains a valuation history that does show a significant change in the allocation of the assessed value between the land component and improvement component between the 1997 and 1998 tax years; however, the same documents indicate that none of the improvements on these properties were built in 1997 or 1998. The Taxpayer did not present any information regarding the assessment methodology applied by the County Assessor to determine the assessments for any assessment year other than 2017, and did not present any information to relate the prior years' assessments to the current tax year. The Taxpayer did not offer any information regarding assessments of non-rural home sites before or after they were improved.

### **B. Assessments Between Counties**

The Taxpayer alleged that there is a difference in the method of taxation between Sarpy County and Douglas and Cass Counties, which results in the Sarpy properties that lie within overlapping Gretna, Springfield, and Millard School Districts bearing a disproportionate burden of taxes. The exhibits presented to the Commission do not contain any information about the assessment practices of any county other than Sarpy County. The Taxpayer cites the Nebraska Supreme Court's opinion in *Sarpy County v. State Board of Equalization and Assessment*,<sup>45</sup> which cites disproportionate dollar per acre figures for agricultural land between counties as a basis for reversing the determinations of the State Board of Equalization adjusting the levels of value of entire classes of property. The case before the Commission does not involve the adjustments to entire classes or subclasses of properties but rather involves a much different potential adjustment to the assessment of a single property; furthermore, there is no evidence to support the Taxpayer's allegations of disproportionate assessments between counties. The 2017 Reports and Opinion of the Property Tax Administrator<sup>46</sup> indicate that while the per acre assessed values for each Land Valuation Group of agricultural and horticultural land in Sarpy County are among the highest among the surrounding counties, they are not disproportionate with the per acre value in these other counties.<sup>47</sup> The overall levels of value for the residential, agricultural and horticultural land, and agricultural and horticultural land subject to special

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<sup>44</sup> E5: 9-17

<sup>45</sup> 185 Neb. 760, 178 N.W.2d 765 (1970),

<sup>46</sup> The Commission may consider and utilize the Reports and Opinions during the course of any hearing or proceeding or as part of the decision making process. 442 Neb. Admin. Code ch. 5 § 031.02 (06/11).

<sup>47</sup> 2017 Reports and Opinions of the Property Tax Administrator for Sarpy County, p. 28.

valuation classes of property in Sarpy County are 96%, 70% and 70% respectively; in Douglas County these same classes have overall levels of value of 93%, 71% and 71%; in Cass County they are 94%, 71% and 71%.<sup>48</sup> The Taxpayers allegation that the differences in assessment of property taxation between Sarpy and Douglas and Cass Counties results in a disproportionate tax burden on Sarpy County properties is not supported by the record.

### **C. Comparable Sales from Other Counties**

The Taxpayer alleges that comparable home sites in adjacent Cass County and Douglas County should be used to determine actual land value for purposes of assessment.<sup>49</sup> To support this allegation the Taxpayer offered limited information about four properties in Cass County that were sold.<sup>50</sup> The list of sales presented by the Taxpayer does not indicate where the information was obtained, and many important characteristics of the properties and the circumstances of the sales are not included.<sup>51</sup> Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>52</sup> The Quality and Condition ratings of the improvements located on each sold property are not indicated on the information provided and are important for determining comparability. Generally, the base construction cost per square foot increases as the quality of the structure increases and decreases as the size increases. Style also affects construction cost per square foot. The base cost to construct a one story, average quality, 2000 square foot residence is higher than the cost to construct a two story, average quality, 2000 square foot residence.<sup>53</sup> The square footage provided in the Taxpayer's information for the Cass County sales does not indicate whether it is all above ground square footage or if below grade square footage is included<sup>54</sup>; where basements are listed, the amount and quality of basement finish is not specified. Without these pieces of information the Commission cannot determine the

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<sup>48</sup> See, 2017 Reports and Opinions of the Property Tax Administrator for Sarpy County, p. 16, 2017 Reports and Opinions of the Property Tax Administrator for Douglas County, p 19, and 2017 Reports and Opinions of the Property Tax Administrator for Cass County, p 17. The "level of value" refers to the median ratio of assessed value to sales price for each class or subclass of property.

<sup>49</sup> While the Taxpayer asserted that sales from both Cass County and Douglas County should be used, no information regarding any properties in Douglas County was offered or received into the record.

<sup>50</sup> See, E5:39-46.

<sup>51</sup> See, E5:39-46

<sup>52</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>53</sup> Marshall & Swift/Boeckh LLC, Residential Cost Handbook, (12/2009 -12/2010) at Avg-19-21.

<sup>54</sup> Some Real Estate listings may include all finished square footage whether above or below grade while assessors and real estate appraiser only include above ground living space.

comparability of the improvements on the sold properties to those on the Subject Property or if adjustments could be made to make them comparable. “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>55</sup> The information presented by the Taxpayer also does not indicate the classification of the property on each sold parcel, i.e., was any portion of the sold property classified as agricultural or horticultural land, and if so, what portion, or the terms of the sale. The Taxpayer did not present the PRFs for any of the Cass County sales that were alleged to be comparable to the Subject Property. The PRFs for the Cass County sale properties would provide information about the characteristics of these properties relevant to their assessments as well as the Cass County Assessor’s determination of assessed value for each of these properties.

Further, the Taxpayer did not provide any information to demonstrate how the inclusion of these Cass County properties would impact the valuation determination of the County Board. The information provided by the Taxpayer regarding the Cass County sales also does not indicate what their assessed values are for the tax year at issue. Equalization to obtain proportionate valuation requires a comparison of the ratio of assessed to actual value for the subject property and comparable property.<sup>56</sup> Without information regarding the assessed values of the Cass County sale properties the Commission cannot analyze the proportionate valuations of these sales.

#### **D. Comparable Properties from Sarpy County**

The Taxpayer alleges that there are insufficient sales in Sarpy County to determine values and that the sales that did occur are not sufficiently comparable to the Subject Property to be used. The Taxpayer provided limited information regarding a single sale in Sarpy County alleging that it was the only “relevant” sale although its “comparability was limited.”<sup>57</sup> As with the Cass County sold properties discussed earlier in this decision, the Taxpayer did not present the PRF for the Sarpy County sale that would provide information about the characteristics of the property relevant to its assessment as well as the Assessor’s determination of assessed value for

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<sup>55</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>56</sup> See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

<sup>57</sup> E5:5

the property. The information provided by the Taxpayer does not indicate where the information about the sale property was obtained, and many important characteristics of the property and the circumstances of the sale are not included.<sup>58</sup> Without these pieces of information the Commission cannot determine the comparability of the improvements on the sold property to those on the Subject Property or if adjustments could be made to make it comparable.

The County Board provided sales reports for the rural residential market areas in Sarpy County, showing all sales that occurred between October 2014 and September 2016. Additionally the County Board presented the PRFs for improved properties that sold and were comparable to the Subject Property.<sup>59</sup> A review of these PRFs as well as the PRF for the Subject Property demonstrates that generally the contribution to value of different characteristics vary depending on the comparability of the parcels. For example, the per square foot base cost of a property with a Good+ quality rating is higher than the per square foot base cost for the Subject Property which has a quality rating of Good.<sup>60</sup>

#### **E. Valuation of Pole Building**

The Taxpayer alleges that the assessed value of the Pole Barn improvement on the Subject Property should be lower and that the amount of depreciation on the Pole Barn should be increased. The Taxpayer's brief indicates that the value of the Pole Barn was reduced in prior years based on evidence presented in those prior years to the County Board. That evidence from the prior years was not presented to the Commission to use when determining the value of the Pole Barn in this appeal. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>61</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>62</sup> The Taxpayer did not produce any information regarding the cost to construct the Pole Barn on the Subject Property or any other cost to construct information. The Taxpayer did not present any information regarding the condition of the Pole

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<sup>58</sup> See, E5:36-38.

<sup>59</sup> E34-41.

<sup>60</sup> See, E34:3 and E6:3.

<sup>61</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>62</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).

Barn or any other factors that might impact the depreciation that would be appropriate to apply to the Pole Barn located on the Subject Property.

The PRF for the Subject Property indicates that the 9,000 square foot Pole Barn on the Subject Property was constructed in 2007 and has a quality rating of Average and a condition rating of Average.<sup>63</sup> The PRF indicates that the costs from the Marshall & Swift cost manual date 6/16 were used to determine the Replacement Cost New (RCN) of the Pole Barn and that a 13% depreciation is applied to the RCN to arrive at an assessed value of \$74,620. The PRF also contains pictures of the interior and exterior of the Pole Barn taken in 2017 and 2018 to support the County Board's determination of assessed value.

#### **F. Valuation of Swimming Pool**

The Taxpayer alleges that assessment of the Subject Property was too high because the Assessor's office assessed a value for the patio surrounding the swimming pool when they discussed installing a pool with a representative of the Assessor's office who told them that a swimming pool would add no value to the Assessment. A review of the PRF shows that the Assessor's office did not attribute any value to the swimming pool on the Subject Property but that the concrete patio or pool deck surrounding the swimming pool was determined to have a value similar to that of the other open slab porch located on the Subject Property.

The Taxpayer offered no evidence of the conversations that took place regarding the valuation of the swimming pool and associated pool deck, other than the allegations presented in the Taxpayer's Brief, to support the allegations regarding the assessment of the swimming pool. The Commission cannot find that the determination of the County Board regarding the assessed value of the swimming pool or pool deck is unreasonable or arbitrary.

### **VI. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its

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<sup>63</sup> E6:4

determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the appeal of the Taxpayer is denied.

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.<sup>64</sup>
2. The taxable value of the Subject Property for tax year 2017 is:

Land:	\$106,541
Buildings:	\$363,996
<u>Outbuildings:</u>	<u>\$ 74,620</u>
Total:	\$545,157
3. This Decision and Order, if no appeal is timely filed, 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.

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<sup>64</sup> Taxable value, as determined by the County Board, was based upon the evidence at the time of the protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

7. This Decision and Order is effective for purposes of appeal on September 27, 2019.<sup>65</sup>

Signed and Sealed: September 27, 2019

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Steven A. Keetle, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>65</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.