

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

Danny Pittman,  
Appellant,

v.

Sarpy County Board of  
Equalization,

and,  
Brian J. & Shellie K. Ault,  
Appellee.

Case Nos: 18A 0080 & 18R 0207

Decision and Order Reversing  
the Sarpy County Board of  
Equalization

Background

1. The Subject Property is a rural residential parcel improved with a 3,190 one and one-half story residence, 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 \$464,386 for tax year 2018.
3. Brian J. & Shellie K. Ault (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$293,708 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$432,111 for tax year 2018.
5. The Taxpayer and the County Assessor each appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on May 20, 2022, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. William J. Bianco, Attorney, and Martin L. Becker (the County Appraiser) were present at the hearing for the County Assessor.
8. The County Board was excused from appearing at the hearing.

9. Brian J. Ault appeared on behalf of the Taxpayer at the hearing.

#### Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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>
13. 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>

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<sup>1</sup> 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, 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.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
15. 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>
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

17. The County Assessor alleged that the County Board's determination of value for the primary acre or "home site acre of the Subject Property at the same value per acre as the second through fifth site acre is unreasonable or arbitrary.
18. The County Assessor presented the Property Record File (PRF) for the Subject Property showing the valuation of the land and improvements prior to County Board action.
19. The County Assessor presented the PRF showing the valuation of the Subject Property after County Board action that demonstrates that that action was to reduce the assessed value of the primary site acre from \$48,840 to \$16,600.
20. The County Assessor presented the rural land model, including locational adjustments, with supporting narrative and sales information.
21. The County Appraiser discussed the rural land model and how it was created and valued rural land not being used for agricultural or horticultural purposes for each of the tax years under appeal including the adjustments for different areas of the county.

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<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. County 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).

22. The rural land model for Valley View values the primary site acre or “home site” at \$48,840, the second through fifth site acres at \$19,920 per acre, and the sixth acre and above at \$11,160 per acre.
23. The Commission finds that the primary site acre of the Subject Property should be valued at \$48,840 for tax year 2020.
24. The Taxpayer alleged that the percentage increase in the value of the Subject Property as compared to the percentage increase in value for other comparable properties was unreasonable or arbitrary.
25. The assessed value for real property may be different from year to year according to 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> The Commission concludes that subsequent assessments are also not relevant to the prior assessment.<sup>11</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>12</sup>
26. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>13</sup>
27. The Taxpayer alleged the assessed value of the improvements on the Subject Property was not equalized with the improvements on other comparable properties.
28. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”<sup>14</sup>

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<sup>9</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>10</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>11</sup> See *Kohl’s Dep’t Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> *Kohl’s Dep’t Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>13</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

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

29. The Taxpayer presented a table of parcel identification number and valuation percentage changes for several properties. The Table includes some of the valuation amounts for these properties.
30. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>15</sup>
31. “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>16</sup>
32. The Taxpayer did not present the PRFs for the properties on the table. 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.<sup>17</sup>
33. The Commission cannot find that the properties presented by the Taxpayer are comparable to the Subject Property.
34. The County Board presented an inspection report of the Subject Property and the PRF for six recent comparable sales.
35. The PRFs provided by the County Board support the valuation of the improvements determined by the County Assessor. The PRFs show that differences in overall value per square foot

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<sup>15</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>16</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

<sup>17</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on March 22, 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.*

between the properties are due to differences in the characteristics of the improvements on the property such as above ground square footage, quality of construction, condition, age, amount of above ground square footage, amount of basement finish, garages, fireplaces, porches, paving and patios, outbuildings, and decks.

- 36. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
- 37. The Taxpayer alleged that the Subject Property was insured for less than the assessed value and that the assessed value of the Subject Property should be reduced accordingly.
- 38. The Taxpayer did not present the insurance policy or any other information to demonstrate how the insured value was arrived at or the terms of the policy in place for the Subject Property.
- 39. The County Assessor 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.
- 40. The County Assessor 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.

**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 2018 is vacated and reversed.
- 2. The taxable value of the Subject Property for tax year 2018:

Land	\$ 70,752
<u>Improvements</u>	<u>\$393,634</u>
Total	\$464,386

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 2018.
7. This Decision and Order is effective on June 23, 2023.

Signed and Sealed: June 23, 2023

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Steven A. Keetle, Commissioner