

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

Danny Pittman,
Appellant,

v.

Sarpy County Board of
Equalization,

and,

Thomas M. & Dorothy M.
Urwin,
Appellee(s).

Case Nos: 18A 0091, 19A 0185
& 20A 0200

Decision and Order Reversing
the Sarpy County Board of
Equalization

Background

1. The Subject Property is a rural residential parcel improved with a 1,109 square foot ranch style residence and several outbuildings, with a legal description of: Lot 1 Stander Acres (5.02 AC) Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$162,900 for tax year 2018, \$167,211 for tax year 2019, and \$179,996 for tax year 2020.
3. Thomas M. & Dorothy M. Urwin (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$115,601 for tax year 2018, \$132,000 for tax year 2019, and also requested a lower valuation for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$132,312 for tax year 2018, \$147,011 for tax year 2019, and \$144,038 for tax year 2020.
5. The County Assessor 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. No one 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 1.¹
11. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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
13. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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.*

- order, decision, determination, or action was unreasonable or arbitrary.⁵
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
 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.⁷
 16. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

1. The County Assessor alleged that the County Board's determination of value for the primary site acre or "home site" acre of the Subject Property at the same value per acre as the second through fifth site acre for tax years 2018, 2019 and 2020, is unreasonable or arbitrary.
2. The County Assessor presented the 2018, 2019, and 2020 Property Record File (PRF) for the Subject Property showing the valuations of the land and improvements prior to County Board action.
3. The County Assessor presented a 2018, 2019, and 2020 PRF showing the valuations of the Subject Property after County Board action that demonstrates that those actions were to reduce the assessed values of the primary site acre from \$40,700 to \$16,600 in 2018, from \$41,500 to \$22,150 in 2019, and from \$56,700 to \$22,560 in 2020.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

4. The County Assessor presented the 2018, 2019, and 2020 rural land model with supporting narrative and sales information for each tax year.
5. 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.
6. The 2018 rural land model values the primary site acre or “home site” at \$40,700, the second through fifth site acres at \$16,600 per acre, and the sixth acre and above at \$9,300 per acre. The 2019 rural land model values the primary site acre or “home site” at \$41,500, the second through fifth site acres at \$22,150 per acre, and the sixth acre and above at \$9,400 per acre. The 2020 rural land model values the primary site acre or “home site” at \$56,700, the second through fifth site acres at \$22,560 per acre, and the sixth acre and above at \$10,170 per acre.
7. The Commission finds that the primary site acre of the Subject Property should be valued at \$40,700 per acre for tax year 2018, \$41,500 for tax year 2109, and \$56,700 for tax year 2020.
8. The County Assessor alleged that the County Board’s determination of value for the outbuildings on the Subject Property was unreasonable or arbitrary.
9. The 2018 PRF showing the valuation of the Subject Property after County Board action shows that the County Board removed the value of some of the outbuildings and the value added for heating in one outbuilding.
10. The 2019 PRF showing the valuation of the Subject Property after County Board action shows that the County Board removed the value of some of the outbuildings but there is no indication of which outbuildings.
11. The 2020 PRF showing the valuation of the Subject Property after County Board action shows that the County Board simply carried over the outbuilding value after 2019 County Board Action.

12. The County Appraiser's narrative states that after the 2018 protest the County Assessor's office did an external inspection of the outbuildings but that an internal inspection request was denied.
13. The County Assessor presented a 2017 photograph showing a chimney on the building from which the heating was removed in 2018.
14. The County Appraiser indicated that after the review of the Subject Property it was his opinion that the value of the outbuildings on the Subject Property for each tax year was that determined by the County Assessor prior to County Board action.
15. The Commission finds that the value of the outbuildings is \$24,024 for tax year 2018, \$25,213 for tax year 2019, and \$25,243 for tax year 2020.
16. The County Assessor alleged that the County Board determination of value for the building or house value for tax year 2018 was unreasonable or arbitrary.
17. The County Appraiser's narrative states that after the 2018 protest the County Assessor's office did an external inspection of the house on the Subject Property but that an internal inspection request was denied.
18. The information and photographs presented support the County Assessor's determination of the quality, condition, and characteristics of the house on the Subject Property and the valuation of \$85,783 for tax year 2018.
19. Finally, the County Assessor stated that due to reclassification of Land Classification Groups the value of the agricultural or horticultural land subject to special valuation on the Subject Property for tax year 2020 should be \$7,271, which is lower than the initial valuation of the agricultural or horticultural land subject to special valuation.

20. 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.
21. The County Assessor has adduced clear and convincing evidence that the determinations 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018, 2019, and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 53,093
Outbuildings	\$ 24,024
<u>Improvements</u>	<u>\$ 85,763</u>
Total	\$162,900

3. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 55,836
Outbuildings	\$ 25,213
<u>Improvements</u>	<u>\$ 86,162</u>
Total	\$167,211

4. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 71,867
Outbuildings	\$ 25,243
<u>Improvements</u>	<u>\$ 81,948</u>
Total	\$179,058

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2018, 2019, and 2020.
9. This Decision and Order is effective on June 23, 2023.

Signed and Sealed: June 23, 2023

Steven A. Keetle, Commissioner