

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

Danny Pittman,
Appellant,

v.

Sarpy County Board of
Equalization,

and,

Matthew J. & Tracy L.
Hawkins,
Appellee(s).

Case Nos: 18A 0093 & 20A 0180

Decision and Order Reversing
the Sarpy County Board of
Equalization

Background

1. The Subject Property is a rural residential parcel improved with a 1,973 square foot ranch style residence and several outbuildings, with a legal description of: Lot 4 Red Feather Ridge (5 AC), Sarpy County, Nebraska
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$440,832 for tax year 2018 and \$518,792 for tax year 2020.
3. Matthew J. & Tracy L. Hawkins (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$360,000 for tax year 2018 and \$445,000 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$416,732 for tax year 2018 and \$477,043 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. Matthew Hawkins and David Grosz 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

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.*

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.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

17. The Taxpayer and the County Assessor stipulated that the 2018 value of the Subject Property should be \$71,551 for the land component, \$54,208 for the outbuildings, and \$290,986 for the residence, resulting in a total valuation of \$416,754.
18. The Commission finds that the 2018 value of the Subject Property is \$416,745.
19. The Taxpayer alleged that the percentage increase in the value of the Subject Property as compared to the increase in value for other comparable properties was unreasonable or arbitrary.
20. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's

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).

⁹ *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).

valuation.¹⁰ The Commission concludes that subsequent assessments are also not relevant to the prior assessment.¹¹ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹²

21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹³
22. The Taxpayer alleged the assessed value of the Subject Property was not equalized with other comparable properties.
23. The Taxpayer presented a partial Property Record File (PRF) for the Subject Property and a property located one lot from the Subject Property in the same subdivision.
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
25. “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.”¹⁵
26. The Taxpayer did not present the complete PRFs for the nearby property. 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

¹⁰ *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).

¹¹ 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).

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

¹³ Neb. Rev. Stat §77-1301(Reissue 2018)

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁵ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

- characteristics of the properties contained in the Taxpayers chart to the Subject Property.¹⁶
27. The Commission cannot find that the property presented by the Taxpayer is comparable to the Subject Property.
 28. However, the information from the partial PRF presented by the Taxpayer shows that the differences in valuation are due to differences in characteristics between the properties.
 29. The Subject Property has significantly more basement finish, more outbuildings and porches, and other amenities than the other property presented by the Taxpayer.
 30. The Taxpayer has not shown that the Subject Property is not equalized with other comparable properties.
 31. The Taxpayer alleged that the value of the Subject Property should be reduced based on a recent appraisal.
 32. While the Taxpayer alleged that an appraisal had been done of the Subject Property no appraisal was presented to the Commission to evaluate. No specific value from the appraisal report was provided to the Commission.
 33. 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.
 34. The County Assessor presented the PRF for the Subject Property showing the valuation of the land and improvements prior to County Board action.
 35. 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 \$68,040 to \$27,070.

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on March 15, 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.*

36. The County Assessor presented the rural land model, including Valley View adjustments, with supporting narrative and sales information.
37. 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 such as Valley View.
38. The rural land model for Valley View values the primary site acre or "home site" at \$68,040, the second through fifth site acres at \$27,070 per acre, and the sixth acre and above at \$12,205 per acre.
39. The Commission finds that the primary site acre of the Subject Property should be valued at \$68,040 for tax year 2020.
40. The County Assessor alleged that the County Board determination of value for the building or house value was unreasonable or arbitrary.
41. The County Appraiser's narrative states that based on the information presented to the County Board at the protest hearing the County Assessor determined that the quality grade of the house should be reduced, and the valuation of the residence should therefore be reduced to \$313,631.
42. The Commission finds that the value of the residence on the Subject Property is \$313,631 for tax year 2020.
43. 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 lowered from \$5,435 to \$4,656.
44. 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.
45. 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 and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 71,551
Outbuildings	\$ 54,208
<u>Improvements</u>	<u>\$290,986</u>
Total	\$416,745

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

Land	\$119,798
Outbuildings	\$ 56,453
<u>Improvements</u>	<u>\$313,631</u>
Total	\$489,882

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2018 and 2020.

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

Signed and Sealed: June 23, 2023

Steven A. Keetle, Commissioner