

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

Danny Pittman,
Appellant,

v.

Sarpy County Board of
Equalization,

and,

Clayton H. and Kay L. Reeves,
Appellee(s).

Case Nos: 18A 0099, 18R 0195,
19A 0200 & 20A 0205

Decision and Order Reversing
the Sarpy County Board of
Equalization

Background

1. The Subject Property is a rural residential parcel improved with a 2,000 square foot ranch style residence, with a legal description of: Lot 2 Hubbard's 2nd Subdivision (5.11 AC), Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$297,684 for tax year 2018, \$305,926 for tax year 2019, and \$308,528 for tax year 2020.
3. Clayton H. and Kay L. Reeves (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$233,147 for tax year 2018, \$222,039 for tax year 2019, and \$250,115 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$273,584 for tax year 2018, \$253,598 for tax year 2019, and \$254,982 for tax year 2020.
5. The Taxpayer and the County Assessor appealed the 2018 determination of the County Board to the Tax Equalization and Review Commission (the Commission). The County Assessor

appealed the 2019 and 2020 determinations of the County Board to the Commission.

6. A consolidated Single Commissioner hearing was held on May 20, 2022, at the 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. Clayton H. and Kay L. Reeves appeared 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

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).

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 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. For all the tax years before the Commission 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.
18. The Taxpayer requested that the determination of value for the primary site acre or “home site” acre of the Subject Property remain at the value determined by the County Board.
19. The County Assessor presented the 2018, 2019, and 2020 Property Record File (PRF) for the Subject Property showing the

⁴ *Id.*

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).

valuation of the land and improvements prior to County Board action.

20. The County Assessor presented a 2018, 2019, and 2020 PRF showing the valuation of the Subject Property after County Board action that demonstrates that that action, with regard to the primary or “home site” acre, was to reduce the assessed value 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.
21. The County Assessor presented the 2018, 2019, and 2020 rural land model with supporting narrative and sales information for each tax year.
22. 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.
23. 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.
24. The Taxpayer did not present information regarding an alternate valuation for the primary or “home site” acre of the Subject Property.
25. 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 2019, and \$56,700 for tax year 2020.
26. The County Board did not change the valuation of the improvements as determined by the County Assessor for the Subject Property for tax year 2018.

27. The County Board reduced the valuation of the improvements on the Subject Property for tax years 2019 and 2020.
28. The Taxpayer appealed the 2018 determination of the County Board and bears the burden to show that the 2018 valuation determined by the County Board was unreasonable or arbitrary.
29. The County Assessor appealed the 2019 and 2020 valuation and bears the burden to show that the 2019 and 2020 valuations determined by the County Board were unreasonable or arbitrary.
30. The Taxpayer alleges that the value of the Subject Property should be reduced based on its quality of construction and condition.
31. The Taxpayer presented information regarding the assessment of the Subject Property for years prior to the tax years at issue in these appeals.
32. 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 valuation.¹⁰ The Commission concludes that subsequent assessments are also not relevant to the prior assessment.¹¹
33. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
34. The Taxpayer alleged that the quality of construction should be reduce based on a determination of quality made in a 1997 appraisal report. In addition to being prepared decades prior to the tax years at issue in these appeals, the appraisal report describes the Subject Property as having vinyl siding rather than the steel siding actually present on the Subject Property. The Commission gives little weight to the 1997 appraisal report

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).

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

for purpose of determining the characteristics or value of the Subject Property in these appeals.

35. The Taxpayer discussed the quality and condition of portions of the improvements on the Subject Property in the tax years at issue and presented estimates for repairs to be made to the improvements on the Subject Property.
36. The Taxpayer presented photographs of portions of the exterior and basement of the improvement on the Subject Property as well as pictures of the appliances.
37. The County Appraiser stated that appliances are not a part of the real property and not assessed by the County Assessor's Office.
38. The County Appraiser discussed the valuation of the improvements on the Subject Property. The County Appraiser stated that an interior and exterior inspection had been conducted in 2016, with a follow up exterior inspection in 2017, and stated that the quality and condition of the Subject Property described by the Taxpayer was taken into account with the determination of a quality of construction rating of average+ and a condition rating of average with a lump sum discount applied to account for the cost to cure the maintenance and repair items that the Taxpayer discussed.
39. The County Appraiser stated that a request for an interior and exterior inspection was made in 2020, to determine if the characteristics of the Subject Property were still correct for the tax years at issue, but that request for inspection had not been granted.
40. The final determination of the County Board for tax year 2018 was to uphold the County Assessor's determination of value for the improvements on the Subject Property. The final determination of the County Board for tax years 2019 and 2020 was that the quality and condition of the Subject Property warranted a reduction in the value of the improvements.

41. The Taxpayer did not present evidence to show that the 2018 determination of the County Board regarding the quality and condition of the improvements on Subject Property and the impact on value was unreasonable or arbitrary.
42. The County Assessor did not present evidence to show that the 2019 and 2020 determinations of the County Board regarding the quality and condition of the improvements on the Subject Property and the impact on value were unreasonable or arbitrary.
43. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the values of other comparable properties.
44. The Nebraska Court of Appeals held in *Scribante* that “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.”¹³
45. The Taxpayer presented the PRF for several properties in the County for each of the tax years at issue that he alleged were comparable to the Subject Property.
46. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
47. “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
48. The information presented to the Commission demonstrates that the differences in the assessed value of the Subject

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

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).

Property, when compared to the other properties offered by the Taxpayer, is explained by the differences in their characteristics, such as location, age, size, and other amenities, including outbuildings.

49. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction of assessed value under the court's determination in *Scribante*.
50. 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.
51. 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 2019, and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 55,763
Outbuildings	\$ 26,211
<u>Improvements</u>	<u>\$215,710</u>
Total	\$297,684

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

Land	\$ 59,116
Outbuildings	\$ 27,229
<u>Improvements</u>	<u>\$186,603</u>
Total	\$272,948

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

Land	\$ 74,598
Outbuildings	\$ 27,921
<u>Improvements</u>	<u>\$186,603</u>
Total	\$289,122

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 29, 2023.

Signed and Sealed: June 29, 2023.

Steven A. Keetle, Commissioner