

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

Danny Pittman,
Appellant,

v.

Sarpy County Board of
Equalization,
and,

Brian L. and Deborah L. Katz,
Appellee.

Case Nos: 18A 0106, 19A 0193,
20A 0207 & 21A 0095

Corrected Decision and Order
Reversing the Determination
of the Sarpy
County Board of Equalization

This Corrected Decision and Order is issued to correct an error in the caption of the Commission's July 12, 2023, Decision and Order.

Background

1. The Subject Property is a rural residential parcel improved with a 2,969 square foot ranch style residence, with a legal description of: Lot 4 Lynn Estates (4.57 AC), Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$524,729 for tax year 2018, \$535,523 for tax year 2019, \$520,926 for tax year 2020, and \$520,922 for tax year 2021.
3. Brian L. and Deborah L. Katz (the Taxpayers) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$425,610 for tax year 2018, \$452,255 for tax year 2019, \$464,651 for tax year 2020, and \$489,796 for tax year 2021.
4. The County Board determined that the taxable value of the Subject Property was \$477,990 for tax year 2018, \$486,483 for

tax year 2019, \$486,786 for tax year 2020, and \$473,981 for tax year 2021.

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 June 7, 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 and Timothy Ederer (the County Appraisers) were present at the hearing for the County Assessor.
8. The County Board was excused from appearing at the hearing.
9. Brian Katz 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

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).

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 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 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, 2020, and 2021 is unreasonable or arbitrary.
18. The County Assessor presented the 2018, 2019, 2020, and 2021 Property Record File (PRF) for the Subject Property showing the valuations of the land and improvements prior to County Board action.

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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).

19. The County Assessor presented a 2018, 2019, 2020, and 2021 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, from \$56,700 to \$22,560 in 2020, and from \$69,500 to \$22,560 in 2021.
20. The County Assessor presented the 2018, 2019, 2020, and 2021 rural land model with supporting narrative and sales information for each tax year.
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.
22. 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. The 2021 rural land model values the primary site acre or “home site” at \$69,500, the second through fifth site acres at \$22,560 per acre, and the sixth acre and above at \$10,250 per acre.
23. For each tax year before the Commission the Taxpayer alleged that the increase in the assessed value of the land component from year to year was unreasonable and arbitrary.
24. 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

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
25. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
 26. 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, \$56,700 for tax year 2020, and \$69,500 for tax year 2021.
 27. The Taxpayer challenged the methodology of the County Assessor for assessing residential properties.
 28. “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 Neb. Rev. Stat. §77-1371, (2) income approach, and (3) cost approach.”¹³
 29. All of the PRFs presented demonstrate that the County Assessor is valuing residential properties using the cost approach to valuation, a methodology specifically allowed by statute.
 30. The PRFs indicate that the County Assessor utilized the Marshall and Swift valuation service to determine characteristics and costs for the cost approach to valuation.
 31. The Marshall Valuation Service and manuals, such as the *Marshall & Swift Residential Cost Handbook*, are standard appraisal works that are utilized by appraisers and county assessors and may be utilized by the Commission.¹⁴
 32. For tax year 2018 the County Assessor alleged that the County Board’s change in the application of economic depreciation to lower the value of the improvement on the Subject Property was unreasonable or arbitrary.

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).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁴ See, Title 350 Neb. Admin. Code ch 10, §004.03 (10/14), Title 442 Neb. Admin. Code ch 5, §031.02 (6/21)

33. For tax year 2018 the Taxpayer alleged that the value of the improvements on the Subject Property were not equalized with other comparable properties.
34. Portions of the Subject Property are used for agricultural or horticultural purposes and subject to special valuation for those acres.
35. The County Appraiser stated that based on sales for the 2018 tax year it was determined that a 5% economic depreciation factor should be applied to rural residential parcels that had no special valuation acres. The County Appraiser stated that based on sales for the 2018 tax year, no economic depreciation factor was applied to parcels classified as rural residential parcels with agricultural or horticultural acres subject to special valuation.
36. 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.”¹⁵
37. The Taxpayer presented the PRF for several properties in the County that he alleged were comparable to the Subject Property.
38. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁶
39. “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.”¹⁷
40. The information presented to the Commission demonstrates that the differences in the assessed value of the Subject

¹⁵ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁶ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

¹⁷ 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 quality of construction, condition, style, type of construction, age or amount complete as of assessment date, size, and other amenities.

41. The Taxpayer has not demonstrated that for 2018 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*.
42. For tax year 2019 the County Assessor alleged that the County Board's change in the characteristics of the improvement to lower the base value and assessed value of the improvement on the Subject Property was unreasonable or arbitrary.
43. For tax year 2019 the Taxpayer alleged that the value of the improvements on the Subject Property were not equalized with 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."¹⁸
45. The Taxpayer presented the PRF for several properties in the County 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.¹⁹
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

¹⁸ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

more like the subject, its price is brought closer to the subject's unknown value."²⁰

48. The information presented to the Commission demonstrates that the differences in the assessed value of the Subject Property, when compared to the other properties offered by the Taxpayer, is explained by the differences in their characteristics, such as quality of construction, condition, style, type of construction, age or amount complete as of assessment date, size, and other amenities.
49. The County Assessor presented the PRF for several properties in the County that the County Assessor alleged were comparable to the Subject Property.
50. The referee recommendation adopted by the County Board states that the reduction was made based a determination that the Subject Property was closer to 85-90% brick veneer rather than 100% brick veneer as determined by the County Assessor and adjusted based on a parcel that is not before the Commission.
51. All of the photographs of the Subject Property show that only a small part of the improvements are not brick veneer and support the determination that the use of 100% brick veneer would be an appropriate determination of construction type of the exterior walls of the Subject Property.
52. The PRFs offered by the County Assessor show that after a reduction in base cost per square foot by the County Board the base cost of the Subject Property was closer to the per square foot value of properties with much less brick veneer than the Subject Property.
53. The base cost per square foot used by the County Assessor is consistent with the base cost per square foot for an improvement of brick veneer construction.²¹

²⁰ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

²¹ See, *Marshall & Swift Residential Cost Handbook* pg. Good-15 and pg. VG 13 (6/2017).

54. The Taxpayer has not demonstrated that for 2019 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*.
55. The County Assessor has shown that the determination of the County Board to reduce the assessed value of the improvements on the Subject Property for tax year 2019 was unreasonable or arbitrary.
56. Similar arguments and issues were raised by the parties for the 2020 and 2021 tax years. The Commission makes similar findings in response.
57. 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.
58. 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, 2020 and 2021 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2018 is:

Land	\$ 72,090
<u>Improvements</u>	<u>\$452,639</u>
Total	\$524,729

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

Land	\$ 78,399
<u>Improvements</u>	<u>\$457,124</u>
Total	\$535,523

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

Land	\$ 93,562
<u>Improvements</u>	<u>\$427,364</u>
Total	\$520,926

5. The taxable value of the Subject Property for tax years 2021 is:

Land	\$106,126
<u>Improvements</u>	<u>\$414,796</u>
Total	\$520,922

6. 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).

7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

8. Each Party is to bear its own costs in this proceeding.

9. This Decision and Order shall only be applicable to tax years 2018, 2019, 2020, and 2021.

10. This Decision and Order is effective on July 12, 2023.

Signed and Sealed: July 19, 2023

Steven A. Keetle, Commissioner