

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

Danny Pittman,
Appellant,

v.

Sarpy County Board of
Equalization,

and

Gary L. Kersten,
Appellee(s).

Case No: 18A 0107

Decision and Order Reversing
the Sarpy County Board of
Equalization

Background

1. The Subject Property is a rural residential parcel improved with a 1,616 square foot ranch style residence and several outbuildings, with a legal description of: Lot 5 Nolan Subdivision (9.26 AC), Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$632,057 for tax year 2018.
3. Gary L. Kersten (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$435,000 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$468,257 for tax year 2018.
5. The County Assessor appealed the determination 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 order, decision, determination, or action was unreasonable or arbitrary.⁵

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.*

⁵ 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.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 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 a 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 \$40,700 to \$16,600.
20. The County Assessor presented the rural land model 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.
22. The 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.

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).

23. The Commission finds that the primary site acre of the Subject Property should be valued at \$40,700 per acre.
24. The County Assessor alleged that the County Board's determination of value for the outbuildings on the Subject Property was unreasonable or arbitrary.
25. The PRF showing the valuation of the Subject Property after County Board action demonstrates that the County Assessor's office was unable to recreate the County Board outbuilding value using their Computer Assisted Mass Appraisal System.
26. The County Appraiser stated that preparing for the appeal to the Commission it was determined that the characteristics of the outbuildings on the Subject Property used in the initial valuation determination by the County Assessor and County Board action were incorrect.
27. It was determined that the quality rating of two of the outbuildings should be lowered, the square footage of finish in the arena corrected, and a loft adjustment applied to reflect the actual quality and characteristics of the outbuildings on the Subject Property.
28. The County Board presented a PRF that demonstrated the assessed value of the outbuildings after correcting for their actual quality and characteristics was \$188,361 for tax year 2018.
29. The Commission finds that the outbuildings on the Subject Property should be valued at \$188,361.
30. 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.
31. The County Assessor has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision 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 is:

Land	\$109,085
Outbuildings	\$188,361
<u>Improvements</u>	<u>\$221,982</u>
Total	\$519,429

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

Steven A. Keetle, Commissioner