

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

Danny Pittman,  
Appellant,

v.

Sarpy County Board of Equalization, and

Bret A. & Renee M. Feller,  
Appellees.

Case No. 18A 0109

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

**For Danny Pittman:**

William Bianco,  
Bianco Stroh, LLC

**For the County Board of Equalization:**

Timothy R. Engler,  
Max Rodenburg,  
Rembolt Ludtke LLP

**For Bret A. & Renee M. Feller:**

No Appearance

This appeal was heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a 10.75 acre rural residential parcel located in Sarpy County, Nebraska. The parcel includes a 6,142 square foot residence and 2.87 acres of agricultural land and horticultural land receiving special valuation. The legal description and property record card for the Subject Property are found at Exhibits 1 and 15 respectively.

**II. PROCEDURAL HISTORY**

The Sarpy County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$1,371,357 for tax year 2018. Bret A. and Renee M. Feller (the Fellers) protested this assessment to the Sarpy County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2018 was \$1,347,257.<sup>1</sup>

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<sup>1</sup> Exhibit 1.

Danny Pittman, acting in his official capacity as the County Assessor, appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 7, 2019. Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. The parties stipulated to the receipt of exchanged exhibits 1-19, 21-25, 40-42, 44-45, 47-56, 69, 76-79, 82, and 84-88. After the hearing, the parties submitted briefs.

### III. STANDARD OF REVIEW

The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup> When the Commission considers an appeal of a decision of a county board of equalization, 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup> The County Board need not put on any evidence to support its valuation of the property at issue unless evidence is adduced establishing that the Board’s valuation was unreasonable or arbitrary.<sup>7</sup>

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<sup>2</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

<sup>3</sup> *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

<sup>7</sup> *Bottof v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998), Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>8</sup> The Commission may also take notice of judicially cognizable facts, take notice of general, technical, or scientific facts within its specialized knowledge, and utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.<sup>9</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>10</sup>

#### IV. APPLICABLE LAW

##### A. Valuation Law

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>11</sup>

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.<sup>12</sup> Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.<sup>13</sup> Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.<sup>14</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>15</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>16</sup>

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<sup>8</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>9</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>10</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>11</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>12</sup> Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>13</sup> *Omaha Country Club* at 180, 829.

<sup>14</sup> Neb. Rev. Stat. § 77-131 (Reissue 2018).

<sup>15</sup> See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

## **B. Equalization Law**

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.<sup>17</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>18</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>19</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>20</sup> Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.<sup>21</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>22</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>23</sup> If taxable values are to be equalized it is necessary for a taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.<sup>24</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>25</sup>

## **V. SUMMARY OF THE EVIDENCE**

The parties do not dispute that the Subject Property was a rural residential parcel and that a portion of the parcel properly qualified for special valuation as agricultural land. The central issue raised in this appeal is the taxable value of what is commonly known as the “first acre” of

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<sup>17</sup> *Neb. Const.*, Art. VIII, § 1.

<sup>18</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>19</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>20</sup> See *Cabela's Inc.*

<sup>21</sup> *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>22</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>23</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>24</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>25</sup> *Id.* at 673, 94 N.W.2d at 50.

the rural residential parcel, which the County Assessor classified as a ‘home site.’<sup>26</sup> The County Assessor refers to the first acre as the “primary acre.”<sup>27</sup> The County Assessor assessed the first acre of the Subject Property at an actual value of \$40,700.<sup>28</sup> The County Board reduced the value of the first acre to \$16,600.<sup>29</sup>

Timothy Ederer testified on behalf of the County Assessor. Ederer has been employed with the County Assessor since 2004. He is a commercial real estate appraiser for the County Assessor. He holds the State Assessor Certificate but is not a licensed appraiser.<sup>30</sup>

Ederer testified that in 2009 he developed the land model that was used to assess the first acre. In assessing the Subject Property, Ederer considered two different land models; one for ‘home sites,’<sup>31</sup> and the other for ‘farm home sites.’<sup>32</sup> He used the ‘home site’ model to value the first acre of the Subject Property.<sup>33</sup> According to the model, the first acre was assessed at a value of \$40,700.<sup>34</sup> He testified that he did not categorize or assess the Subject Property as a ‘farm home site.’<sup>35</sup>

Martin Becker also testified on behalf of the County Assessor. Becker has been employed by the County Assessor for six years and holds the State Assessor Certificate. Becker performed the assessment of the Subject Property for tax year 2018 for the County Assessor.

Becker testified that the undepreciated values of the electricity, water well, and septic system utilities amounted to \$22,400, but that their values were included in the value of the improvements.<sup>36</sup> Becker cited to the standard operating procedure followed by the County Assessor which assumed that these utilities would “be maintained generally in concert with the

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<sup>26</sup> Home site means a parcel, which is used or intended to be used for residential purposes. Title 350, NAC, Chapter 10, Section 002.09.

<sup>27</sup> See Exhibit 4:3.

<sup>28</sup> Exhibit 44:1.

<sup>29</sup> Exhibit 15:1.

<sup>30</sup> Ederer’s resume is found at Exhibit 76.

<sup>31</sup> Exhibit 49.

<sup>32</sup> Exhibit 50. See Neb. Rev. Stat. § 77-1359(3) (Reissue 2018).

<sup>33</sup> Exhibit 49.

<sup>34</sup> Id.

<sup>35</sup> Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision. Neb. Rev. Stat. § 77-1359(3) (Reissue 2018). Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site. Neb. Rev. Stat. § 77-1359(4) (Reissue 2018).

<sup>36</sup> Exhibit 40:2, testimony of Becker.

residence and experience similar depreciation [as experienced by the residence].”<sup>37</sup> He stated that the assessment of the first acre at \$40,700 was based upon a “bare ground analysis,” i.e., not including the value of the utilities. Becker testified that the first acres of approximately 600 rural residential properties in the same market area as the Subject Property were assessed uniformly at \$40,700. Thus, Becker testified as to his opinion that the County Board, by reducing the first acre values for all the rural residential properties that protested their assessments, created disequalization among all the rural residential properties within the same market area in the county.

The County Board’s argument that the first acre of the Subject Property was over-assessed was based upon an assertion that the \$22,400 value of electricity, a water well, and the septic system were included in the assessments of *both* the improvement component and the land component of the Subject Property, and that therefore the land value should be reduced to \$16,600. Becker testified that assertion was flawed for two reasons: that these utilities had not been double counted, and that the County Board’s calculation was in error since \$47,700 minus \$22,400 does not equal \$16,600.

The County Board also argued that the valuation of these utilities was done in direct violation of a Directive from the Property Tax Administrator and the Tax Commissioner,<sup>38</sup> for the reason that the rural land model used by the County Assessor to value the Subject Property relied upon sales from platted subdivisions. The Directive gives guidance to county assessors in determining whether a site is a ‘farm home site.’ Because it applies to ‘farm home sites,’ we do not read the Directive as cautioning the County Assessor from applying the home site model found at Exhibit 49 to the valuation of the Subject Property.<sup>39</sup>

Based upon the evidence received, we find that the value placed upon the first acre of the Subject Property by the County Board is unreasonable or arbitrary and that the model used by the County Assessor was reasonably applied in the assessment conducted by the County Assessor.

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<sup>37</sup> Exhibit 40:1.

<sup>38</sup> Exhibit 3, Directive 12-3, August 6, 2012. The Commission notes that the Directive does not carry the force and effect of law: it functions as a guidance document only.

<sup>39</sup> Ederer testified that he did not categorize or assess the Subject Property as a ‘farm home site,’ *supra*.

## VI. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For the reasons set forth above, the determination of taxable value by the County Board should be vacated and reversed.

## VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2018 is vacated and reversed.
2. The assessed value of the Subject Property for tax year 2018 is:

Land	\$ 139,712
Improvements	<u>\$1,231,645</u>
Total	<b>\$1,371,357</b>

3. This Decision and Order, if no appeal is timely filed, 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 for purposes of appeal on April 14, 2021.<sup>40</sup>

Signed and Sealed: April 14, 2021

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>40</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.