

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

Richard J. Novak,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 18R 0070

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Lot 210 Plum Creek Second Platting.
2. The Sarpy County Assessor (the Assessor) assessed the Subject Property at \$220,559 for tax year 2018.
3. Richard J. Novak (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$197,695.68 for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$220,559 for tax year 2018.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Richard J. Novak was present at the hearing.
8. Jackie Morehead, Deputy Assessor, and Robert White, an appraiser employed by the Assessor, were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</sup> 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 (2009).

11. 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.”<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>
12. 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>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the 8% increase in the valuation of the Subject Property resulted in an assessed value over market value. The Taxpayer researched other properties in the neighborhood and conducted four different methods of valuation to arrive at a valuation he felt was more accurate.
17. The Taxpayers four methods of concluding valuation included (1) a neighborhood drive where he found all the ranch style homes with three car garages that were “similar” to the Subject Property, (2) market area sales report from Robert White, (3) data provided by Andrea Gosnold-Parker, and (4) data provided by Robert White of ranch style homes with three car garages. Throughout the Taxpayer’s methods of valuation, the total finished square footage was divided by the assessed value to arrive at a cost per square foot. The Taxpayer stated he used similar style homes with three car garages and finished square footage in the basement to try comparing “apples to apples.” The Taxpayer asserted he did not use homes with little to no finished square footage in the basement as he deemed those not as comparable. The Taxpayer’s analysis resulted in an indicated

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

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

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

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

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

price per square foot of \$90.30 (when averaging the price per square foot of all four of the Taxpayer's methods of valuation) compared to the Taxpayer's assertion that the Subject Property is valued at \$100.99 per square foot.

18. The Assessor stated they use the Terra Scan CAMA (computer assisted mass appraisal) system when valuing properties for assessment. The Assessor stated the costing tables for the CAMA system are updated yearly with new information gathered through sales analysis and neighborhood reviews. The neighborhood where the Subject Property is located was reviewed by the Assessor's office in May of 2018.
19. The Assessor stated that the Taxpayer's four methods of valuation do not take quality, condition, plumbing fixtures or miscellaneous improvements (i.e. decks, porches, patios) into account when finding comparable properties. The Assessor stated finding a cost per square foot by using the total finished area divided by the assessed value is not an accepted method used in mass appraisal. The Assessor asserted there are three different quality codes in the Taxpayer's neighborhood and some of the properties used by the Taxpayer are two story homes; these differences could greatly skew the results without proper adjustments being made for the differences. The Assessor feels the current assessment of the Subject Property is correct and the Taxpayer has not provided competent evidence to show otherwise.
20. The Commission finds that the four methods of valuation used by the Taxpayer are not accepted methods of mass appraisal or independent appraisal and would not comply with the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>9</sup>
21. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has not 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 affirmed.

## 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 affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

<u>Total</u>	<u>\$220,559</u>
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<sup>9</sup> The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

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 September 6, 2019.

Signed and Sealed: September 6, 2019

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James D. Kuhn, Commissioner