

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Thomas David Friedman,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19C 0195, 19C 0196, 19C 0197,
19C 0198, 19C 0199, 19C 0200, 19C 0201
& 19C 0202

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

Background

1. The Subject Properties are eight unimproved residential parcels located in the Gold Coast Heights subdivision of Sarpy County. Legal descriptions of the parcels can be found in the case files.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Properties as follows for tax year 2019:

Case No	Value
19C 0195	\$137,598
19C 0196	\$130,539
19C 0197	\$139,608
19C 0198	\$133,887
19C 0199	\$146,862
19C 0200	\$169,977
19C 0201	\$135,759
19C 0202	\$ 60,246

3. Thomas David Friedman (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested lower assessed values for tax year 2019.
4. The County Board determined that the taxable values of the Subject Properties were as follows for tax year 2019:

Case No	Value
19C 0195	\$130,718
19C 0196	\$124,012
19C 0197	\$132,628
19C 0198	\$127,193
19C 0199	\$139,519
19C 0200	\$161,478
19C 0201	\$128,971
19C 0202	\$ 60,084

5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 31, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Thomas Friedman was present at the hearing with his legal counsel, Shaun M. James, of Smith Gardner & Slusky Law.
8. Melissa Delaney and Tim Ederer, of the Sarpy County Assessor's Office, 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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
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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. The Taxpayer must introduce competent evidence of actual value of the Subject Properties in order to successfully claim that the Subject Properties are overvalued.⁷

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 (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).

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).

15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer owns eight unimproved lots in the same Sarpy County subdivision.
17. The Taxpayer alleges that the Subject Properties are entitled to a discounted assessed value and should be assessed as if they were a single parcel using the income approach to value.⁹ The Taxpayer presented no additional argument regarding the valuation of the Subject Properties as set by the County Board.
18. In order to qualify for assessment of multiple parcels as a single parcel using the income approach to value a property owner must elect to have the parcels treated as one parcel.¹⁰
19. “Such election shall be made annually by filing an application with the county assessor by December 31.”¹¹
20. For the prior assessment year, the Taxpayer made this election by submitting a Vacant or Unimproved Lot Application (Form 191) to the assessor’s office for the Subject Properties, which then received a discounted assessed value. The Taxpayer further stated that he usually filed the Form 191 with the assessor’s office at the same time that he paid the property taxes due on the Subject Properties in the County Treasurer’s Office because they are located in the same building.¹²
21. In 2017, however, the Taxpayer paid the property taxes early because of a federal tax law change. On the last Friday before the new year (December 29, 2017), the Taxpayer attempted to file a Form 191 for the Subject Properties for the 2019 assessment. The assessor’s office refused to accept a Form 191 for the 2019 assessment until after the first of the year (January 1, 2018).
22. The Taxpayer did not file a Form 191 with the assessor’s office for the Subject Properties between January 1, 2018, and December 31, 2018.
23. The Taxpayer next filed a protest of the valuation of the Subject Properties with the County Board pursuant to Neb. Rev. Stat. § 77-1502.
24. The County Board adjusted the assessed values of the Subject Properties but declined to adjust the valuation method because a Form 191 was not filed for the 2019 assessments.
25. Statutory language is to be given its plain and ordinary meaning.¹³ “Annually” is ordinarily understood to mean “covering the period of a year,” “occurring or happening every year or once a year,” or “yearly.”¹⁴

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

⁹ See Neb. Rev. Stat. § 77-1314 (Reissue 2018).

¹⁰ Neb. Rev. Stat § 77-132 (Reissue 2018).

¹¹ Neb. Rev. Stat § 77-132(3) (Reissue 2018).

¹² Real property taxes in Sarpy County become due December 31. The first half become delinquent on April 1 and the second half becomes delinquent on August 1. See, Neb. Rev. Stat §§77-203 & 77-204 (Reissue 2018).

¹³ *ML Manager v. Jensen*, 287 Neb. 171, 177, 842 N.W.2d 566 (2014).

¹⁴ Merriam-Webster’s Collegiate Dictionary, 47 (10th ed. 1998).

26. Neb. Rev. Stat. § 77-132 requires that filing be made annually and gives a deadline of December 31.
27. A year before December 31 would be the time period from January 1, to December 31 of each year, and for purposes of the matter before the Commission, would be January 1, 2018 to December 31, 2018.
28. The Taxpayer failed to present evidence that a Form 191 was filed during the year occurring from January 1, 2018, to December 31, 2018.
29. The Taxpayer failed to file an election under Neb. Rev. Stat. § 77-132, in 2018 for the 2019 assessment. Accordingly, the parcels are subject to taxation as individual parcels.
30. The Commission has only that authority specifically conferred upon it by the Constitution of the State of Nebraska, by Nebraska State Statutes, or by construction necessary to achieve the purpose of the relevant provisions or act.¹⁵ The Commission does not generally have equitable powers. Therefore, when presented with claims that sound in equity, the Commission does not have the power to render equitable decisions without express constitutional or statutory authority.¹⁶
31. 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.
32. The Taxpayer has not 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 affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2019 are affirmed.
2. The Taxable values of the Subject Properties for tax year 2019 are:

Case No	Value
19C 0195	\$130,718
19C 0196	\$124,012
19C 0197	\$132,628
19C 0198	\$127,193
19C 0199	\$139,519

¹⁵ See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61, 67, 554 N.W.2d 778, 782 (1996).

¹⁶ From the time of its inception in 1995 until 2001, the Commission was authorized by statute to hear appeals “as in equity.” See e.g., 1995 Neb. Laws LB 490, § 153; 2001 Neb. Laws LB 465 § 7; 2004 Neb. Laws LB 973 § 51. This was the same language that had previously applied to valuation appeals heard by the district courts prior to the creation of the Commission. In 2007, the Legislature repealed the section of statute which had authorized the Commission to hear appeals “as in equity.” See 2007 Neb. Laws LB 167, § 6.

Case No	Value
19C 0200	\$161,478
19C 0201	\$128,971
19C 0202	\$ 60,084

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 2019.
7. This Decision and Order is effective on July 26, 2021.

Signed and Sealed: July 26, 2021

Steven A. Keetle, Commissioner