

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Blaine Ross,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 19R 0153

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

Background

1. The Subject Property is a residential parcel improved with a 2,367 square foot two story residence, with a legal description of: Lot 82 Shadow Lake.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$340,277 for tax year 2019.
3. Blaine Ross (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$309,320 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$340,277 for tax year 2019.
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 27, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, NE, before Commissioner Steven A. Keetle.
7. Blaine Ross was present at the hearing.
8. Robert White an appraiser employed by the Sarpy County Assessor’s Office (the County Appraiser) was 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

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).

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. 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
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 alleged that the assessed value of the Subject Property had increased too much from the prior year’s assessed value. The Taxpayer stated that the County Board reduced the assessed value in the prior year and that any adjustment to the assessed value should be based on the County Board’s determination for the prior year.
17. The Taxpayer did not present information regarding the basis for the County Board’s action in the prior assessment year.
18. The County Appraiser stated that he was unable to determine the basis of the County Board’s adjustment to value in the prior year.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ A prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰

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).

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

⁹ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 355, 13 N.W.2d 451, 453 (1944), *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ *DeVore, Affiliated Foods*, see also *Kohl’s Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

20. The County Appraiser stated that a mistake in coding the features of the improvements on the Subject Property in the CAMA (Computer Assisted Mass Appraisal) system utilized by the County Assessor for tax year 2019 had been discovered and needed to be corrected.
21. The County Appraiser stated that the when the errors were corrected the assessed value determined by the CAMA system for the improvements on the Subject Property for tax year 2019 should be \$260,896, which when added to the \$49,000 land value and the value of a swimming pool, assessed at \$13,160, results in a total assessed value of \$323,056.
22. The Taxpayer alleged that the assessed value of the Subject Property was higher than the average assessed value of other properties in the area and should be reduced to the average assessed value of these properties.
23. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska statutes.¹¹ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹²
24. The Taxpayer's requested value was determined by averaging assessed values for other nearby properties. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the subject property as defined by statute.¹³ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach. Because the Taxpayer's requested value was not determined by a professionally accepted appraisal approach, the Commission gives little weight to it.
25. Additionally, professional appraisal practice holds that "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."¹⁴
26. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with another comparable property.
27. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁵
28. Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity.¹⁶

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2018).

¹² Id.

¹³ Id.

¹⁴ Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13th ed. 2008).

¹⁵ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

29. “The object of Nebraska’s uniformity clause is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.”¹⁷
30. The Taxpayer presented a Property Record File (PRF) for a nearby property, which the Taxpayer had been in, that he alleged was comparable to the Subject Property but had a lower per square foot value.
31. The County Board presented the corrected PRF for the Subject Property and the PRFs for four sales comparables and five equalization comparables.
32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁸
33. “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.”¹⁹
34. The PRFs demonstrate that the differences in values between all of the properties presented, including the Subject Property, are due to differences in the characteristics of the properties such as size, finished basement, size of porch, swimming pools and other amenities.
35. Comparing the Subject Property to the property presented by the Taxpayer as comparable, for example, the Subject Property has an additional plumbing fixture, larger porch, and swimming pool that account for the Subject Property’s additional assessed value.
36. The Commission finds that the assessed value of the Subject Property is \$260,896 attributed to the improvement component, \$13,160 attributed to the swimming pool, and \$49,000 attributed to the land component, resulting in a total assessed value of \$323,056, for tax year 2019.
37. The Taxpayer 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.
38. The Taxpayer 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.

¹⁷ *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 20 (2012).

¹⁸ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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 2019 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 49,000
Pool	\$ 13,160
<u>Improvements</u>	<u>\$260,896</u>
Total	\$323,056

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 August 24, 2021.

Signed and Sealed: August 24, 2021

Steven A. Keetle, Commissioner