

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Joshua S. Shafer,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19R 0260 & 20R 0366

Amended Decision and Order Affirming the
Determination of the ~~Douglas-Sarpy~~
County Board of Equalization

This Amended Decision and Order is being issued to correct an error in the caption. This correction does not substantially change the findings or order. The time for appeal is not lengthened. See Neb. Rev. Stat. § 77-5018(2).

Background

1. The Subject Property is a residential parcel improved with a 2,800 square foot two story residence, with a legal description of: Lot 102 Hawk Ridge, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$387,189 for tax year 2019 and \$326,671 for tax year 2020.
3. Joshua S. Shafer (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$179,783 for tax year 2019 and \$274,890 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$318,387 for tax year 2019 and \$326,671 for tax year 2020.
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 June 15, 2021, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Joshua S. Shafer was present at the hearing.
8. Shane Grow and Jameson McShane, with 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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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. 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

1. The Subject Property is a two-story residence with a contemporary style and two double stall garages. The Subject Property was completed in 2018 with the Taxpayer acting as the general contractor.
2. The Taxpayer alleges that the specific features of the Subject Property such as the lack of wood trim around the windows and doors, the bathroom finishes, the contemporary style of the exterior and landscaping have a negative impact on its value.
3. The Taxpayer alleges that the determination of the County Board is not equalized with other comparable properties and does not take into consideration the unique characteristics of the Subject Property which would impact its actual value.

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).

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

4. The County Board presented the 2019 and 2020 Property Record File (PRF) for the Subject Property, which included a revised 2019 valuation based on a revision of the characteristics of the Subject Property after a July 2019 inspection.
5. The Taxpayer did not present the PRF for any of the properties presented for equalization purposes. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as type of construction, size, quality, condition, basement finish, etc.⁹
6. The Commission is unable to evaluate the Taxpayer's equalization claim from the information presented.
7. The Taxpayer presented two appraisal reports of the Subject Property that were prepared for lending institutions and had opinion dates of February 7, 2018 (the 2018 Appraisal Report) and July 13, 2020 (the 2020 Appraisal Report).
8. The Taxpayer alleges that the values determined in the 2018 and 2020 appraisal reports take into account the specific features of the Subject Property that impact value and demonstrate that the valuation determination of the County Board is unreasonable.
9. The 2018 Appraisal Report and the 2020 Appraisal Report are each certified as having been prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
10. A presumption exists that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its actions.¹⁰ The presumption disappears when competent evidence to the contrary is presented.¹¹ Once the presumption is rebutted, whether the valuation assessed is reasonable becomes a question of fact based on all of the evidence, with the burden of proof resting on the taxpayer.¹²
11. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹³
12. The Taxpayer has rebutted the presumption in favor of the determination of the county Board.
13. The taxpayer's burden to show the valuation to be unreasonable is not met by showing a mere difference of opinion. Rather, the taxpayer must establish the valuation placed upon

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on March 10, 2021, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

¹⁰ See Neb. Rev. Stat. § 77-5016(9); *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013); *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283-284, 276 N.W.2d 802, 811 (2008) note 7 (citing *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

¹¹ *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013), note 34.

¹² See *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013).

¹³ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013). See also: *U.S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 588 N.W.2d 575 (1999).

the property when compared with valuations placed on other similar property is grossly excessive and is a result of arbitrary or unreasonable action and not a mere error of judgment.¹⁴

14. The County Board presented the PRF for comparable sales and equalization comparable properties for tax years 2019 and 2020.
15. The County Board alleged that the comparable sales utilized by both appraisal reports are not comparable and that the adjustments made in the appraisal reports do not make the sold properties comparable to the Subject Property.
16. Shane Grow is an appraiser with the Sarpy County Assessor's office and a Nebraska Certified Residential Appraiser (the County Appraiser).
17. The County Appraiser stated that he reviewed the 2018 Appraisal Report and the 2020 Appraisal Report but did not rely on them when determining the value of the Subject Property due to concerns that he had with the methodology in each report.
18. The County Appraiser stated that three of the four comparable sales in the 2018 Appraisal Report were tract homes that would have a lower quality rating than the Subject Property, two of the comparable sales were the same property sold twice, the adjustments, particularly the bathroom/trim adjustment, were not supported by the information contained in the report, and the cost approach calculation supported a higher opinion of value.
19. The County Appraiser stated that three of the four comparable sales in the 2020 Appraisal Report were tract homes that would have a lower quality rating than the Subject Property, the adjustments, particularly the contemporary style adjustment, were not supported by the information contained in the report, and the cost approach was not conducted.
20. The County Appraiser stated that the valuations of the Subject Property, the County Board's sales comparables and the County Board's equalization comparables were determined using a cost approach model. The valuations determined by the cost model were verified with sales to determine if the results were reflecting actual market values before the model was finalized.
21. The County Board offered the PRF for recent sales of properties with contemporary styling.
22. The Taxpayer alleges that the County Assessor's determination of quality rating for the Subject Property is too high and that the quality rating should be average rather than above average or average plus.
23. The photographs and descriptions of the interior and exterior of the Subject Property do not demonstrate that the County Assessor's determination of above average quality for the Subject Property is unreasonable, arbitrary, or incorrect.

¹⁴ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447, (2013).

24. The 2018 Appraisal Report and the 2020 Appraisal Report both indicate that they obtained the information regarding the comparable sales from the county records; however, these records are not included in the reports.
25. The Commission finds that the adjustments to the comparable sales made in both the 2018 Appraisal Report and the 2020 Appraisal Report are not supported by the information presented at the hearing and therefore gives their determinations of values little weight.
26. The information presented to the Commission does not demonstrate that the unique features of the Subject Property may have an impact on its actual value.
27. 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.
28. 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 Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 is:

Land	\$ 29,000
<u>Improvements</u>	<u>\$289,387</u>
Total	\$318,387

3. The taxable value of the Subject Property for tax years 2020 is:

Land	\$ 29,000
<u>Improvements</u>	<u>\$297,671</u>
Total	\$326,671

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.

8. This Decision and Order is effective on June 6, 2022.

Signed and Sealed: June 10, 2022

Steven A. Keetle, Commissioner