

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

JOSHUA S. SHAFER
APPELLANT,

CASE NOS: 19R 0260
& 20R 0366

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE SARPY COUNTY
BOARD OF EQUALIZATION

For the Appellant:

Joshua S. Shafer,
Taxpayer

For the Appellee:

Andrea Gosnold-Parker,
Deputy Sarpy County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 2,800 square foot two-story single-family residence located in Sarpy County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibit 7.

II. PROCEDURAL HISTORY

The Sarpy County Assessor (the County Assessor) determined the assessed value of the Subject Property was \$387,189 for tax year

2019.¹ Joshua S. Shafer (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested an assessment of \$179,783.² The County Board determined the taxable value of the Subject Property for tax year 2019 was \$318,387.³

The County Assessor determined the assessed value of the Subject Property was \$326,671 for tax year 2020.⁴ The Taxpayer protested this assessment to the County Board and requested an assessment of \$274,890.⁵ The County Board determined the taxable value of the Subject Property for tax year 2020 was \$326,671.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a Single Commissioner hearing, consolidating the appeals, on June 15, 2021, and on June 6, 2022, issued a Decision and Order affirming the Determinations of the County Board. On June 30, 2022, the Taxpayer requested a Rehearing.

The Commission held a rehearing on November 8, 2022. Prior to the hearing, the parties exchanged exhibits and submitted a pre-hearing conference Report, as ordered by the Commission. Exhibits 1-41 and 45-47 were admitted into evidence. Exhibits 42-44 were not admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁷ When the Commission considers an appeal of a decision of a

¹ Exhibit 1.

² Exhibit 6:1.

³ Exhibit 1.

⁴ Exhibit 2.

⁵ Exhibit 26:1.

⁶ Exhibit 2.

⁷ 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

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.⁸

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.⁹

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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹² The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.¹³

is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁸ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (citations omitted).

⁹ *Id.*

¹⁰ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

¹² Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 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 County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹³ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb. App. 162, 580 N.W.2d 561 (1998).

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.¹⁴ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁵ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁶

IV. RELEVANT 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.¹⁷

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.¹⁸ Nebraska courts have held that actual value, market value, and fair market value mean

¹⁴ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁶ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-112 (Reissue 2018).

exactly the same thing.¹⁹ 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.²⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²² 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.²³

V. FINDINGS OF FACT

A. Testimony of Joshua Shafer

Joshua Shafer is the owner of the Subject Property. Shafer stated the Subject Property is unique in design, amenities, and build quality, as he built the Subject Property himself rather than using a professional custom home builder. Construction on the property began in 2015, and the residence was ready to occupy in 2018. Shafer argued the County Board's assessment of properties using mass appraisal methods would always produce instances of overvaluation, therefore not complying with the requirements of Neb. Rev. Stat. § 77-112.

Shafer stated the Subject Property's unique design, amenities, and build quality preclude it from being compared with other properties. As

¹⁹ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 180, 645 N.W.2d 821, 829 (2002).

²⁰ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²¹ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

²² Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

²³ Neb. Const., art. VIII, § 1.

such, Shafer argued any comparable properties selected by the County Board would not be truly comparable due to these unique traits.

Shafer presented two separate appraisals for the Subject Property.²⁴ One has an effective date of February 7, 2018,²⁵ and was completed at the end of construction in contemplation of permanent financing. The other has an effective date of July 13, 2020,²⁶ and was completed in contemplation of refinancing. The appraisals were completed by different appraisers. Shafer argues when the County Board and its protest referee subsequently accepted the appraisals as evidence of value for tax year 2021, lowering the assessed value from \$331,383 to \$275,000, that value should also be applied to the prior year valuations for tax years 2019 and 2020.²⁷

The assessed value for real property may be different from year to year according to the circumstances.²⁸ As such, a prior year's assessment is not relevant to the subsequent year's valuation,²⁹ and subsequent assessments are not relevant to the prior assessment.³⁰

B. The County Board's Evidence

The County Board did not call any witnesses to provide testimony at this hearing. The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer

²⁴ Exhibits 9, 28.

²⁵ Exhibit 9:7.

²⁶ Exhibit 28:2.

²⁷ Exhibit 47;

²⁸ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

²⁹ *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

³⁰ See *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

establishes the County Board's valuation was unreasonable or arbitrary.³¹

C. Submitted Appraisal Reports

The parties stipulated to the submission of the two bank appraisals. One had an effective date of February 7, 2018, and the other had an effective date of July 13, 2020.³² Both appraisals purport to be compliant with the Uniform Standards of Professional Appraisal Practice.

The Commission notes several issues of concern with the appraisals. Neither appraiser was called to testify or to be subject to cross-examination regarding the appraisals. Further, neither appraisal was retrospective to the relevant effective dates of January 1, 2019, or January 1, 2020.³³ These concerns limit the persuasiveness of the appraisals.

The 2018 appraisal developed both a cost approach and a sales comparison approach for valuation. For the sales comparison approach, the 2018 appraiser selected four properties for comparison.³⁴ The appraiser noted a significant difference in style between the Subject Property and comparison properties, stating they were “unable to find similar contemporary style home within market area – this style not common in area. No adjustment for style due to difficulty extracting market reaction.”³⁵ The sales comparison approach did make other adjustments, including for the age of the properties and a \$15,000 adjustment for the Subject Property's lack of trim. The sales

³¹ *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 647, 935 N.W.2d 764, 771 (2019).

³² Exhibit 28:2.

³³ Neb. Rev. Stat. § 77-1301 (1) (Cum. Supp. 2024).

³⁴ Exhibit 9:3, 8.

³⁵ Exhibit 9:8.

comparison approach resulted in an opinion of value of the Subject Property of \$267,000.³⁶

The cost approach valuation was significantly higher at \$348,045.³⁷ The appraiser's cost approach included \$5,453 for physical depreciation as well as \$15,000 for functional depreciation. The appraiser noted the functional depreciation was based upon the "subject's inferior bath finish and no window/door trim."³⁸ The 2018 appraiser's cost approach resulted in a value higher than that set by the County Board for tax years 2019 and 2020. The appraiser reconciled the two values by stating the "[s]ales comparison approach was considered the best indication of value since it best reflects market value in the area... Cost approach was completed since subject is a newer home."³⁹

The 2020 appraisal provided an opinion of value for the Subject Property of \$275,000 as of July 13, 2020.⁴⁰ It developed this opinion based on only a sales comparison approach.⁴¹ The appraiser selected four properties for comparison.⁴² The comparable properties range from 6 to 16 years older than the Subject Property, yet no adjustments were made for age. Additionally, the appraiser made a \$20,000 adjustment to each comparison property with the rationale that the Subject Property's "design is neither typical or common in this market area."⁴³ "This, combined with the subject's large concrete front, no grass lawn, metal roof, and no interior trim (all uncommon in this market area) would limit it's marketability to a specialized

³⁶ *Id.* at 3.

³⁷ *Id.* at 4.

³⁸ *Id.* The Commission believes this describes "functional obsolescence," defined as "Functional or technical obsolescence is loss in value due to lack of utility or desirability of part or all of the property, inherent to the improvement or equipment. Thus, a new structure or piece of equipment may suffer obsolescence when built." Marshall & Swift/Boeckh, LLC, *Residential Cost Handbook*, at E-1 (12/2010).

³⁹ Exhibit 9:3.

⁴⁰ Exhibit 28:2.

⁴¹ *Id.* at 4.

⁴² Exhibit 28:4, 9.

⁴³ *Id.* at 4.

purchaser.”⁴⁴ The appraisal does not demonstrate how the appraiser quantified the \$20,000 adjustment based on design.

Further, the appraiser describes the Subject Property having a “Q3” quality of construction rating. Comparison properties 1, 2, and 3, are also “Q3” rated.⁴⁵ But comparison properties 2 and 3 each have a \$10,000 adjustment for quality of construction even though they are the same quality grade as the Subject Property.⁴⁶ The appraisal report states “[q]uality adjustments given based upon the amount and extent of quality materials in each dwelling considering materials utilized at initial construction, any materials added from improvements completed since, and their probable affect [sic] on marketability and value from the perspective of the typical buyer in this market area.”⁴⁷ This description does not explain why the adjustment is \$10,000.

VI. ANALYSIS

A. The Cost Approach is a valid and professionally accepted method of determining market value.

Shafer contended the cost approach used by the assessor is not compliant with Neb. Rev. Stat. § 77-112, which states “[a]ctual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade.” Shafer argued this provision means that replacement cost alone is not a valid indicator of value “in the ordinary course of trade.” Shafer’s argument appears to be based on a misunderstanding of the cost approach.

The cost approach, as used in the context of appraisal, is a specific methodology much more complicated than “replacement cost.” The cost approach derives a value indication “by estimating the cost new as of the effective date of the appraisal to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial

⁴⁴ *Id.* at 12.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 12.

incentive; deducting depreciation from the total cost; and adding the estimated land value.”⁴⁸ It is a six-step process where replacement cost is an important but not sole variable for value.⁴⁹

Appraisal literature states, “[t]he cost approach is more reliable for newer structures of standard materials, design, and workmanship.”⁵⁰ The Subject Property was constructed in 2018, tax years 2019 and 2020 are at issue, and the Subject Property’s “unique design” limits the use of the sales comparison approach due to the difficulty of quantifying adjustments for differences between comparable properties and the Subject Property. These factors suggest the cost approach may be the most reliable methodology for the Subject Property.

In any case, it is a methodology specifically permitted under the very statute Shafer references to refute its application. “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 section 77-1371, (2) income approach, and (3) *cost approach*.”⁵¹ The Commission does not find Shafer’s arguments persuasive over the clear language of the statute. The cost approach is a permissible methodology for valuation of the Subject Property under Nebraska law.

⁴⁸ *Cost Approach, The Dictionary of Real Estate Appraisal* (7th ed. 2022).

⁴⁹ The steps of the cost approach are: “(1) Estimate the land (site) value as if vacant and available for development to its highest and best use; (2) Estimate the total cost new of the improvements as of the appraisal date, including direct costs, indirect costs, and entrepreneurial profit from market analysis; (3) Estimate the total amount of accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence; (4) Subtract the total amount of accrued depreciation from the total cost new of the primary improvements to arrive at the depreciated cost of improvements; (5) Estimate the total cost new of any accessory improvements and site improvements, then estimate and deduct all accrued depreciation from the total cost new of these improvements; (6) Add site value to the depreciated cost of the primary improvements, accessory improvements, and site improvements, to arrive at a value indication by the cost approach.” International Association of Assessing Officers, *Property Assessment Valuation* 230 (3rd ed. 2010); see Appraisal Institute, *The Appraisal of Real Estate* 532-33 (15th ed. 2020).

⁵⁰ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

⁵¹ Neb. Rev. Stat. § 77-112 (Reissue 2018) (emphasis added).

B. The 2018 and 2020 appraisals in evidence are not clear and convincing evidence the County Board’s decision was arbitrary or unreasonable.

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. As such, the appraisals constitute competent evidence to rebut the presumption that the County Board had faithfully performed its official duties in making an assessment and acted upon sufficient competent evidence to justify its action.

However, “[o]nce the challenging party overcomes the presumption of validity by competent evidence, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all of the evidence presented. . . . The burden of showing a valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board of equalization.”⁵²

“It is well established that the value of the opinion of an expert witness is no stronger than the facts upon which it is based.”⁵³ “The sales comparison approach is applicable to most types of real property interests when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market.”⁵⁴

Based on the issues noted above, the Commission finds that the appraisals have limited persuasive value. The reports do not value the Subject Property as of the respective effective dates. They contain adjustments without the necessary foundation or explanation. Their methodology, ostensibly based on professionally accepted standards,

⁵² *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 644-45, 935 N.W.2d 764, 769-70 (2019) (citing *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 941-42, 911 N.W.2d 551, 558 (2018)).

⁵³ *Bottorf v. Clay Cty. Bd. Of Equal.*, 7 Neb.App. 162, 167, 580 N.W.2d 561, 565 (1998). See *McArthur v. Papio-Missouri River NRD*, 250 Neb. 96, 547 N.W.2d 716 (1996); *Lindsay Mfg. Co. v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994).

⁵⁴ Appraisal Institute, *The Appraisal of Real Estate* 353 (15th ed. 2020).

adopts errors inconsistent with the Commission's knowledge and expertise.⁵⁵ While these adjustments may or may not be reasonable, the information contained within the appraisals themselves does not demonstrate how the appraisers quantified the adjustments, only providing an end result. These issues may have been resolved by the testimony of the appraisers. Without that testimony, the Commission does not find the appraisals constitute clear and convincing evidence showing the County Board's determinations were arbitrary or unreasonable.

C. The Taxpayer has not adduced clear and convincing evidence the County Board's decision was arbitrary or unreasonable.

As set forth above, the Commission finds the Taxpayer has not adduced clear and convincing evidence the County Board's decisions were arbitrary or unreasonable. The appraisals submitted into evidence were effective ten months prior to the 2019 assessment date (2018 appraisal) and seven months after the 2020 assessment date (2020 appraisal). No time adjustments were provided within the appraisals to account for market changes. Both appraisers made adjustments without sufficient support within the appraisal report. Neither appraiser was called to testify by either party or be subject to cross-examination.

Accordingly, since there is not clear and convincing evidence the County Board decisions were arbitrary or unreasonable, the Commission must affirm the decisions of the County Board of Equalization for tax years 2019 and 2020.

VII. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However,

⁵⁵ See Neb. Rev. Stat. § 77-5016 (6).

the Commission also finds there is not clear and convincing evidence the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determinations of the County Board should be affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Sarpy County Board of Equalization determining the taxable values of the Subject Property for tax years 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax year 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 year 2020 is:

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

4. 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).
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 for purposes of appeal on April 8, 2025.⁵⁶

Signed and Sealed: April 8, 2025

SEAL



Robert W. Hotz, Commissioner

James D. Kuhn, Commissioner

⁵⁶ 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.