

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Phillip L. South,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 19R 0297

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

Background

1. The Subject Property is a residential parcel improved with a 1,611 square foot ranch style residence, with a legal description of: Lot 65 Stonybrook South, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$219,725 for tax year 2019.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$211,750 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$219,725 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 September 18, 2020, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Phillip L. South (Taxpayer) as present at the hearing.
8. Jackie Moorhead, Chief Deputy Sarpy County Assessor, and Shane Grow, Real Estate Appraiser for the Sarpy County Assessor's Office (the County Appraisers), 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

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 land component of the Subject Property is not equalized with other comparable properties and did not take into consideration the location of the lots (e.g. corner lot, cul-de-sac, etc.).
17. The Taxpayer presented a table showing the land component values for all 58 parcels in the Stonybrook South neighborhood that are improved with ranch style properties. This chart showed that all 58 of these lots had an assessed value of \$35,000 for tax year 2019, which resulted in different per square foot values depending on the lot size.
18. The County Board presented a land characteristic review spreadsheet showing all sales in the Stonybrook South neighborhood arrayed by characteristic. This table demonstrates that the assessment-to-sale ratio of each different characteristic type was not impacted by the location of the lot.
19. Shane Grow stated that, based on a review of residential sales in the area, parcels in the Stonybrook South neighborhood were valued on a per lot basis for tax year 2019, because

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).

all of the lots were of a sufficient size to build a residence. The sales did not indicate that the size of the lots impacted their market value.

20. The Taxpayer alleged that the increase in the assessed value of the Subject Property was due exclusively to the sale of the Subject Property, or that the County Assessor was “sales chasing.”
21. The Taxpayer purchased the Subject Property in September 2018 for \$230,000.
22. The assessed value of the Subject Property in 2018 was \$204,788 and the assessed value in 2019 was \$219,725.
23. The County Appraisers stated that the value of the Subject Property increased more than other ranch style properties in the neighborhood, due to changes in the characteristics of the Subject Property for tax year 2019. The County Assessor’s office reviews the sales of all properties that take place in the county. In the course of the review of the sale of the Subject Property, including the MLS listing, it was discovered that the windows had been replaced, the bathrooms updated and a ¾ bath was added in the basement without taking out any permits for the work. Based on this information, the condition rating of the Subject Property was increased and the number of plumbing fixtures was changed to reflect the additional bathroom fixtures.
24. The Taxpayer did not dispute the accuracy of the characteristics of the Subject Property as determined by the County Assessor, but rather alleged that the changes were the result of sales chasing because only the characteristics of sold properties were changed based on the MLS listings.
25. The County Appraisers presented lists of all properties located in the Stonybrook South neighborhood. The assessed values of these properties increased in percentage amounts ranging from 1.2% to 34% (the Subject Property increased 7.3%). The County Appraisers indicted that the differences in percentage increases were due to differences in market value for different characteristics, as well as changes in the characteristics for properties. These changes were discovered by the County Assessor’s office during sales reviews but were also based on building permits and other sources of information regarding unsold properties.
26. The Taxpayer has failed to demonstrate that the assessed value of the Subject Property was changed based on its sale price alone.
27. The Commission further finds that the County Assessor’s office has not engaged in sales chasing by only adjusting the assessed values of sold properties or only adjusting the characteristics of sold properties.
28. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with the assessed values of other comparable properties.
29. The Taxpayer presented information from the County Assessor’s web site regarding other properties in the county.
30. The Taxpayer did not present the Property Record Files (PRF) for any of the properties that the Taxpayer alleged were comparable to the Subject Property. Without the details

contained in the PRF of these properties, the Commission is unable to determine the contributions of the various amenities or features of the properties, such as type of construction, size, quality, condition, porches, garages, basement size, basement finish, etc., to the value of the improvements.⁹ Additionally, the information presented indicates that some of the properties presented are located in other areas of the county, some as far away as Bellevue.

31. The County Board presented information, including the PRFs, for several comparable sales located near the Subject Property, as well as several unsold properties comparable to the Subject Property. The County Board alleged that the information regarding these properties supported the assessed value of the Subject Property and demonstrated that its assessed value is equalized with other comparable properties.
32. The Taxpayer has failed to demonstrate that the value of the Subject Property is not equalized with other comparable properties.
33. The Taxpayer requested that the assessed value of the Subject Property only increase at the average amount of the increase for ranch style properties in the neighborhood.
34. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska statutes.¹⁰ The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.¹¹
35. The Taxpayer's opinion of value was determined by averaging the percentage increase in values of nearby ranch style properties and applying that percentage increase to the Subject Property. 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.¹² Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as a mass appraisal method 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.
36. 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.
37. 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.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on August 12, 2020, includes the following:

NOTE: *Copies of the County's Property Record File for any parcel 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 Neb. Rev. Stat. §77-112 (Reissue 2018).

¹¹ *Id.*

¹² *Id.*

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 affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 35,000
<u>Improvements</u>	<u>\$184,725</u>
Total	\$219,725

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 September 29, 2021.

Signed and Sealed: September 29, 2021

Steven A. Keetle, Commissioner