

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

BARBARA A. PLEISS
APPELLANT,

CASE NO: 20R 0010

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING THE DECISION
OF THE SARPY COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Sarpy County, parcel number 011581897.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$206,802 for tax year 2020.
3. Barbara A. Pleiss (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$206,802 for tax year 2020.
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 November 3, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Christopher and Barbara Pleiss were present at the hearing for the Taxpayer.
8. Shane Grow and Jameson McShane with the County Assessor's Office (the County Appraisers) were present for the County Board.

II. 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer alleged that the condition of the Subject Property was below average and that therefore the value should be reduced.
17. The Taxpayer discussed the condition of the Subject Property including the roof, driveway, foundation cracks, deck, bathroom mirror, vinyl floor, and ceiling.
18. The Taxpayer also discussed the condition of the appliances and window coverings however these items are not valued as part of the Subject Property.
19. The Taxpayer presented photographs of the items discussed. The Taxpayer presented estimates for the replacement of the roof and installation of a sump pump and water guard system.
20. The County Board presented photographs of the interior and exterior of the Subject Property taken by the Assessor's Office as well as photographs taken when the Subject Property was last listed for sale. The County Board also presented photographs of the interior and exterior of several other properties in the same neighborhood as the Subject Property.
21. The County Board presented a packet of information regarding the valuation of the Subject Property including an appraiser's statement of the assessment of the Subject Property, the Property Record Card (PRF) for the Subject Property, the PRF

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

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

for five equalization comparables, the PRF for a recent comparable sale, and the PRF for the three properties presented by the Taxpayer.

22. The County Appraiser stated that the interior and exterior of the Subject Property was inspected in preparation for the hearing and that during the inspection the Taxpayer pointed out the items that were discussed to the appraiser. The County Appraiser stated that considering all information available at the hearing and the inspection the condition rating of average was correct for the Subject Property.
23. The Taxpayer has not provided information to demonstrate that the condition rating of average for the Subject Property was unreasonable, arbitrary, or incorrect.
24. The Taxpayer alleged that the Subject Property was not being equalized with other comparable properties.
25. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."⁹
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
27. The PRFs presented by the County Board show that the Subject Property and the nine other properties before the Commission are all valued using the same methodology, differing only for amenities, the largest difference being amount of basement finish.
28. The none of the properties presented by the Taxpayer as being valued lower than the Subject Property have any basement finish while the Subject Property has a portion of its basement that is finished.

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

29. The Commission has determined, based on a review of the PRF for the Subject Property, the comparable properties, the sump pump estimate, and the listing photographs, along with the statements of the Taxpayers and County Appraisers have that the amount of basement finish listed for the Subject Property should be 581 square feet rather than 707 square feet.
30. The Commission finds that the value of the Subject Property should be reduced by \$3,740 to account for the correct amount of finished basement in the Subject Property.¹¹
31. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels, after the correction for the actual amount of basement finish in the Subject Property.
32. The Commission finds that the value of the Subject Property for tax year 2020 is \$203,062.
33. 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.
34. 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.

IV. 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 2020 is vacated and reversed.

¹¹ 707 sq ft x \$29.68 unit cost = \$20,984 (from PRF)
581 sq ft x \$29.68 unit cost = \$17,244 (revised sq ft)
\$20,984 - \$17,244 = \$3,740.

2. The taxable value of the Subject Property for tax year 2020 is:

| | |
|---------------------|------------------|
| Land | \$ 33,000 |
| <u>Improvements</u> | <u>\$170,062</u> |
| Total | \$203,062 |

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 2020.
7. This Decision and Order is effective on February 15, 2023.

Signed and Sealed: February 15, 2023



Steven A. Keetle, Commissioner