

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

EDWARD J. & CHRISTINE
POLZIN,
APPELLANTS,

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NO: 20R 0130

DECISION AND ORDER
AFFIRMING 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 010937056.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$209,893 for tax year 2020.
3. Edward J. & Christine Polzin (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 \$209,893 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 4, 2021, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Edward J. Polzin, Sr and Christine C. Polzin were present at the hearing for the Taxpayer.
8. Jameson McShane and Shane Grow with the County Assessor's Office 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 Subject Property is a 0.585 acre residential parcel improved with a 2,130 square foot ranch style residence built in 1964.
17. The Taxpayer alleged that the assessed value increase from the prior assessment is too high.
18. The Taxpayer further alleges that the assessed value of the Subject Property should be reduced because the County Board reduced the property in the prior year.
19. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹¹
21. The 2019 referee recommendation indicates that the value was reduced because the County Assessor did not explain how the value was calculated. The County Board presented an abundance of information to show how the value of the Subject Property was calculated for assessment year 2020.

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).

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

¹¹ Neb. Rev. Stat §77-1301(Reissue 2018)

22. 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 for three recent sales near the Subject Property, sales listing information for these parcels, the PRF for three equalization comparables, and a list of all properties in the subdivision.
23. The Taxpayer alleges that the Subject Property should be placed in a different market area.
24. The County Appraisers stated that the Subject Property is more like the properties in the Green Meadows subdivision than it was to the properties in its old market area classification, suburban non-homogeneous. The County Appraisers stated that the values determined using the old suburban non-homogenous market area were inconsistent and varied wildly due to the lack of sales and non-homogeneity of characteristics therefore it was no longer used for the Subject Property. The County Appraisers further stated that the Subject Property's current market area is more reflective of the market influence of the location and nearby amenities of the area near the Subject Property.
25. The County Appraisers stated that the Subject Property is valued using the same assessment model as all other properties in the Green Meadows subdivision. The County appraisers stated that the improvements on Subject Property were older than the other parcels in the Subdivision and the Subject Property has a larger lot than other parcels in the subdivision but that these differences were accounted for in the model.
26. The PRF for the Subject Property and the other PRFs from the Green Meadows subdivision show how each of their values were calculated.
27. The Subject Property has the lowest base cost per square foot for the improvement and the highest depreciation applied as would be expected for a property older than others in the Subdivision. Other differences in value for the improvements are attributable

to differences in characteristics such as basement finish, fireplaces, garage size, etc.

28. The PRF shows that the Subject Property does have the largest total land value because it has the largest lot, however it also has the lowest per square foot value when compared to the other lots in the subdivision.
29. This is consistent with professionally accepted appraisal methodology which holds that “[s]ize differences can affect value and are considered in site analysis. Reducing sale prices to consistent units of comparison facilitates the analysis of comparable sites and can identify trends in market behavior. Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase. The functional utility or desirability of a site often varies depending on the types of uses to be placed on the parcel. Different prospective uses have ideal size and depth characteristics that influence value and the highest and best use.”¹²
30. 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.
31. 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.

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 affirmed.

¹² Appraisal Institute, *The Appraisal of Real Estate*, at 198 (14th ed. 2013).

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

Land	\$ 40,000
<u>Improvements</u>	<u>\$169,893</u>
Total	\$209,893

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 28, 2023.

Signed and Sealed: February 28, 2023

Seal



Steven A. Keetle, Commissioner