

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

JAMES R. JAROS
APPELLANT,

CASE NO: 20R 0324

V.

SARPY COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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 010488901.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$478,753 for tax year 2020.
3. James R. Jaros (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 \$478,753 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 21, 2021, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. James Jaros was present at the hearing for the Taxpayer.
8. Robert White with the County Assessor's Office (the County Appraiser) was 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 1.17-acre parcel improved with a 3,082 square foot residence that the County Assessor has called a 1-½ story residence.
17. The Taxpayer alleges that the Subject Property is not a 1-½ story residence.
18. The Taxpayer presented portions of an appraisal report that he alleges indicate the Subject Property is a ranch style property.
19. 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 six equalization comparables, the PRF for five recent sales of comparable properties, an incomplete fee appraisal for the Subject Property from 2017, the PRF for three of the fee appraisal sales, lists of all sales in the Subject Property's market area, and a list of all properties in the Subject Property's market area.
20. The PRF indicates that the Subject Property has 2731.59 square feet on the first floor and 350.31 square feet on the second floor.
21. Both of the partial appraisals indicate that the Subject Property is a detached two-story ranch. A property cannot be a two story

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).

and a ranch style property, and this design (style) designation is not explained in either of the partial reports presented.

22. 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.⁹ Both of the appraisals presented to the Commission are incomplete, either because pages are missing, or portions of the appraisals have been redacted and cannot be certified as being performed according to professional standards.
23. All of the information presented regarding the Subject Property indicate that it is a 1-1/2 story property.
24. The Commission finds that the Subject Property is a 1-1/2 story residential property.
25. The PRF presented by the County Board show that the properties were all valued using the cost approach to value. The cost approach begins with a base per square foot cost determined using the factors set forth in the Marshal and Swift valuation service. These base costs are determined by looking at the type of construction, quality of construction, and style. Generally, the base cost for a ranch style property is higher than the base cost for a 1-1/2 story property and a 1-1/2 story property would be higher than a 2-story property. Additionally, the higher the quality of construction, the higher the base cost per square foot.
26. The PRF's for the Subject Property and all of the other properties presented show that the differences in base costs in the assessments follow this pattern, as would be expected using professionally accepted mass appraisal processes.
27. The other differences in per square foot values are attributed to differences in the characteristics and amenities that the

⁹ *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).

- properties have such as age, garage type and size, basement finish, swimming pools, etc.
28. The County Appraiser stated that the cost approach valuation models were calibrated using recent sales but that there were not many sales in the Subject Property's market area.
 29. The Taxpayer alleged that because there were not any 1-1/2 story sales used to calibrate the assessment model the Subject Property should be valued as a ranch style property.
 30. The Taxpayer offered no information to support the allegation that the Subject Property should be valued as a ranch style property.
 31. The Taxpayer alleged that the percentage increase in value of the Subject Property from the prior years assessed value was higher than the average percentage increase for ranch style properties from the prior years assessed values that the value of the Subject Property should be decreased.
 32. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹
 33. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹²
 34. 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.
 35. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and therefore the decision of the County Board should be affirmed.¹³

¹⁰ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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).

¹² Neb. Rev. Stat §77-1301(Reissue 2018)

¹³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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

Land	\$ 70,440
<u>Improvements</u>	<u>\$408,313</u>
Total	\$178,753

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 March 6, 2023.

Signed and Sealed: March 6, 2023



Steven A. Keetle, Commissioner