

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

THOMAS W. DEMORY
APPELLANT,

CASE NO: 20R 0358

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 011591781.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$585,620 for tax year 2020.
3. Thomas W. Demory (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 \$585,620 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. Tom Demory was present at the hearing for the Taxpayer.
8. Shane Grow and Jameson McShane with the County Assessor's Office (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 Subject Property is a 0.505 acre double lot parcel improved with a 4,271 square foot two story residence.
17. 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 information presented by the Taxpayer at the County Board hearing, the Property Record Card (PRF) for the Subject Property, inspection report, and inspection request, a list of all the sales in the Subject Property's market area, a list of all of the properties in the Subject Property's market area, the PRF for three equalization comparables, the PRF and Multiple Listing Service (MLS) information for three sales comparables, and other statistical reports.
18. The Taxpayer alleges that the square footage of the residence used by the County Assessor's office is incorrect in that it includes the finished space above the garage.
19. The floor plan of the Subject Property shows the area above the garage as unfinished storage space. The Taxpayer stated that their original plan was to leave it that way but during construction it was decided to finish that space as a bonus room.
20. The Taxpayer stated that they have difficulty heating and cooling the space above the garage with the rest of the house.

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).

21. The County Appraisers stated that there is duct work to the space above the garage and that it is not unusual for space above a garage to be harder to heat and cool than the rest of a residence. The County Appraisers stated that all finished above ground living space is counted as above ground living space when assessing properties.
22. The Commission finds that the Taxpayer has not presented evidence to demonstrate that the square footage of the Subject Property used by the County Assessor is incorrect.
23. The Taxpayer next alleges that the quality rating of the Subject Property assigned by the County Assessor is incorrect.
24. The Taxpayer presented photographs of the tub and shower from the second-floor bathrooms, a closet, the area above the garage, and the back staircase of the Subject Property and discussed the materials used in these areas. The Taxpayer admitted that he believed portions of the Subject Property were of excellent quality.
25. The County Board presented an inspection report showing that the Subject Property was inspected during the construction process. The inspection report shows a quality of construction determination of very good being made for the Subject Property.
26. The Taxpayer has not demonstrated that the quality rating of very good as determined by the County Assessor is unreasonable or arbitrary.
27. The Taxpayer alleged that the Subject Property had foundation issues that required removal of the basement finish and would reduce the value of the Subject Property.
28. The Taxpayer presented photographs of the work being done to install foundation piers and the County Board presented bids for the installation of foundation piers on the Subject Property.
29. The Taxpayer stated that the foundation work was completed as of the assessment date. The information presented shows that that 1,265 square feet of the basement was finished as of the assessment date.

30. The information presented to the Commission show that the foundation issues that the Subject Property had have been remediated as of the assessment date. The Taxpayer did not present any information to quantify any impact the foundation pillars may have on the assessed value of the Subject Property.
31. The Taxpayer alleges that the Subject Property should not have the highest assessed value in the neighborhood and is not valued equally with other comparable properties.
32. “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
33. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
34. The list of all properties in the neighborhood shows that the Subject Property has the largest lot and the second largest residence, based on above ground square footage, in the neighborhood. Additionally, the parcel with the largest residence than the Subject Property has a lower quality rating than the Subject Property.
35. The Taxpayer presented information from the County Assessor’s web site regarding properties that he alleged were comparable to the Subject Property but assessed at a lower amount.
36. The information presented by the Taxpayer demonstrates that the properties presented are significantly different than the Subject Property in both land components and improvements. Without the PRF for the comparable properties or the reference properties, the Commission is unable to determine the

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).

adjustments to apply to make the other properties comparable to the Subject Property.¹¹

37. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
38. The PRFs provided by the County Board show that the differences in overall value per square foot between the properties are due to differences in the characteristics of the improvements on the property such as type of construction, quality of construction, condition, age, amount of above ground square footage, amount of basement finish, garages, fireplaces, porches, paving and patios, decks, and lot size.
39. The Taxpayer has not demonstrated that the assessed valuation of the Subject Property and similarly situated property are at materially different levels.
40. The information presented to the Commission indicates that the Subject Property has the highest total assessed value in its neighborhood due to its combination of lot size, above ground square footage, quality of construction, basement finish and other amenities.
41. 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.
42. 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.

¹¹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 28, 2021, includes the following:

NOTE: *Copies of the County's Property Record File for any property 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.*

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	\$ 82,000
<u>Improvements</u>	<u>\$503,620</u>
Total	\$585,620

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 16, 2023.

Signed and Sealed: March 16, 2023.



Steven A. Keetle, Commissioner