BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

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<tr><td>JOHN J. PORTERA,
APPELLANT,

V.

SARPY COUNTY BOARD OF EQUALIZATION,
APPELLEE.</td><td>CASE NOS: 21R 0045
& 23R 0438

DECISION AND ORDER AFFIRMING THE DECISIONS OF THE SARPY COUNTY BOARD OF EQUALIZATION</td></tr>
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APPELLANT,

V.

SARPY COUNTY BOARD OF EQUALIZATION,
APPELLEE.

AND

DAN PITTMAN,
APPELLANT,

V.

SARPY COUNTY BOARD OF EQUALIZATION, AND

JOHN J. PORTERA,
APPELLEES.</td><td>CASE NOS: 22R 0185
& 22R 0374

DECISION AND ORDER REVERSING THE DECISIONS OF THE SARPY COUNTY BOARD OF EQUALIZATION</td></tr>
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For the Appellant John J. Portera:
John J. Portera

For the Appellee Sarpy County Board of Equalization:
No Appearance

For the Appellant Dan Pittman:
William J. Bianco,
Bianco Stroh, LLC

These appeals were heard before Commissioners Steven Keetle and Jackie Russell.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a ranch-style residence located at 10212 Emiline Street, La Vista, Sarpy County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property for each tax year at issue are found at Exhibits 7, 31, and 65.

II. PROCEDURAL HISTORY

The Sarpy County Assessor (Assessor) determined that the assessed value of the Subject Property was $345,255 for tax year 2021.[1] John J. Portera (the Taxpayer) protested this assessment to the Sarpy County Board of Equalization (the County Board) and requested a taxable value of $302,132.[2] The County Board determined that the taxable value of the Subject Property for tax year 2021 was $354,255.[3]

The Assessor determined that the assessed value of the Subject Property was $371,220 for tax year 2022.[4] The Taxpayer protested this assessment to the County Board and requested a taxable value of

[1] Exhibit 1.
[2] Exhibit 6:2
[3] Exhibit 1.
[4] Exhibit 2 and 3.

$321,750.[5] The County Board determined that the taxable value of the Subject Property for tax year 2022 was $354,220.[6]

The Assessor determined that the assessed value of the Subject Property was $387,457 for tax year 2023.[7] The Taxpayer protested this assessment to the County Board and requested a taxable value of $309,966.[8] The County Board determined that the taxable value of the Subject Property for tax year 2023 was $387,457.[9]

The Taxpayer appealed the 2021, 2022, and 2023 decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Assessor appealed the 2022 decision of the County Board to the Commission. The Commission held a hearing on June 6, 2024. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1 through 87 were admitted into evidence. Exhibit 88 was not admitted into evidence but was filed as a brief.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[10] When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.[11] The first involves a presumption that the board of equalization has faithfully performed its official duties in making an assessment and has acted

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[5] Exhibit 29:2

[6] Exhibit 2 and 3.

[7] Exhibit 4

[8] Exhibit 64:2

[9] Exhibit 4.

[10] See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

[11] *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

upon sufficient competent evidence to justify its action.[12] 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.[13]

The second burden of proof requires that 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.[14] The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[15]

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.[16] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[17]

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[18] The County Board need not put on any evidence to support its valuation of the property at issue unless the

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[12] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).
[13] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.
[14] *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[15] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[16] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[17] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *Omaha Country Club v. Douglas County Bd. of Equal.,* 11 Neb. App. 171, 645 N.W.2d 821 (2002).
[18] Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County,* 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.[19]

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.[20] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[21] The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.[22] The Commission's Decision and Order shall include findings of fact and conclusions of law.[23]

IV. RELEVANT LAW

Under Nebraska law,

> Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of

[19] *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).
[20] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[21] *Id.*
[22] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[23] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

> the real property and an identification of the property rights valued.[24]

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.[25] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[26] Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.[27] All real property in Nebraska subject to taxation shall be assessed as of January 1.[28] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[29]

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.[30] "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value."[31] The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.[32] Uniformity requires that whatever methods are used to determine actual or taxable value for various

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[24] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[25] *Id.* (citing Neb. Rev. Stat. § 77-1371).
[26] *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.
[27] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[28] See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).
[29] Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2022).
[30] Neb. Const., art. VIII, § 1.
[31] *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
[32] *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

classifications of real property, the results be correlated to show uniformity.[33] Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.[34] If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.[35] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[36]

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

a. Testimony of John Portera

John J. Portera testified regarding the characteristics of the Subject Property. Portera testified that the room on the ground floor that he uses as an office, identified as "Bedroom #2" on the plans for the residence,[37] was not a bedroom due to its use, size, double glass doors, and no ensuite bathroom. Portera stated that the room in the basement identified as "Bedroom #4" on the plans for the residence[38] has a window that is too high off the ground, has too small an opening, and does not have the external concrete pad required to be an egress window for a bedroom. Portera further alleged that the location near Harrison Street negatively impacted the value and structural integrity of the Subject Property.

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[33] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

[34] *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

[35] *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.2d at 6 (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

[36] *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

[37] Exhibit 87:3

[38] Exhibit 87:4

b. Testimony of Jamison McShane

Jamison McShane is an appraiser for the Sarpy County Assessor's Office. McShane testified he was responsible for setting the assessed values of the Subject Property for the years at issue in these appeals. McShane testified regarding the assessment models used to assess residential properties in the county, including the Subject Property. McShane stated that all residential parcels in the Subject Property's market area are assessed using the same assessment models. McShane discussed the additional modeling he did in response to the Taxpayer's concerns as well as his reasoning for not performing all of the hypothetical modeling that the Taxpayer requested.

McShane testified that the second upstairs room used by the Taxpayer as an office would be considered a bedroom for assessment purposes. McShane further testified that he would agree with the Taxpayer that the room in the basement with identification as "Bedroom #4" on the plans would be a non-conforming bedroom. However, he explained, the County's assessment model only accounted for finished square footage in the basement, no matter how that square footage was used, and therefore didn't identify or specifically set values for bedrooms in basements.

B. Analysis

a. One Bedroom Versus Two Bedroom

The Taxpayer's main concern is the classification of the Subject Property as a two-bedroom home. The Taxpayer alleged that as a 10' x 10' room without an ensuite bathroom and with double glass doors the room he uses as an office is unusable as a bedroom. This allegation is not supported by the evidence before the Commission.

The Assessor presented the plans for the Subject Property as approved by the developer which show that the room in question is listed as "Bedroom #2" on the plans with external dimensions of 12' x 11.14'.[39] Additionally, the Assessor presented the 2018 sales listing of

[39] Ex 87:3

the Subject Property as a four-bedroom ranch and identifying the room as "Bedroom #2" with dimensions of 10.11' x 10.10'.[40]

The evidence supports the classification of the Subject Property as a two-bedroom home for assessment purposes. For all three tax years on appeal, the County Board agreed that the Subject Property was a two-bedroom residence.[41] However, in tax year 2022, the referee indicated that the second bedroom should have functional obsolescence applied due to its location and French doors. For tax year 2022 the County Board adopted the recommendation of its referee for a "valuation more in line with other ranches on Emiline St."[42]

The Assessor presented the Property Record File (PRF) for the Subject Property and five sales in the same subdivision to support the Assessor's 2022 assessed value along with sales listings and other sales information.[43] The Assessor further provided the PRF for five additional properties valued using the same assessment model as the Subject Property to demonstrate the equalization of the assessed value of the Subject Property with other comparable properties for tax year 2022.[44] Taken together, the evidence before the Commission shows that for tax year 2022, as well as the other tax years under appeal, the assessed value as determined by the Assessor for the Subject Property is its market value determined using professionally accepted mass appraisal methods. Further, this value was determined using an assessment model that was applied uniformly and proportionally to all parcels in the Subject Property's market area. This evidence also shows that the 2022 valuation determination of the County Board did not result in a value for the Subject Property that was more in line with other ranch properties on Emiline Street. The Assessor has demonstrated that the 2022 assessed value determination of the County Board for the Subject Property was arbitrary or unreasonable.

[40] Exhibit 34:1
[41] See, Exhibits 1-4
[42] Exhibit 2
[43] Exhibits 47-51
[44] Exhibits 41-45

b. Location Backing to Harrison Street

The Taxpayer alleged that the location of the Subject Property in relation to Harrison Street has a negative impact on the value of the Subject Property. McShane testified that the County Assessor's office did consider the impact of major roads on the value of residential properties in the county. The Assessor presented an exhibit showing the lot sales from the Subject Property's development that back to Harrison Street as well as several lots on the opposite side of the Subject Property's street that do not back to Harrison Street.[45] These sales do not show any negative impact of lots backing to Harrison Street when compared to the lots that do not back to Harrison Street. McShane testified that for this reason the Assessor's office has not applied a negative adjustment to any property in the Subject Property's subdivision for backing to Harrison Street. The Taxpayer has not demonstrated a negative impact on the value of the Subject Property due to its proximity to Harrison Street.

VI. CONCLUSION

The Commission finds that for tax year 2022 there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that for tax year 2022 there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The Commission finds that for tax year 2021 and 2023 there is no competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that for tax year 2021 and 2023 there is not

[45] Exhibit 6:6

clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the 2022 determination of the County Board should be vacated and reversed, and the 2021 and 2023 determinations of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2022 is vacated and reversed.
2. The decisions of the Sarpy County Board of Equalization determining the value of the Subject Property for tax years 2021 and 2023 are affirmed.
3. The assessed value of the Subject Property for tax year 2021 is:

Land	$ 58,000
Improvements	$287,255
Total	$345,255

4. The assessed value of the Subject Property for tax year 2022 is:

Land	$ 58,000
Improvements	$313,220
Total	$371,220

5. The assessed value of the Subject Property for tax year 2023 is:

Land	$ 63,000
Improvements	$324,457
Total	$387,457

6. This Decision and Order, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
7. Any request for relief, by any party, which is not specifically

provided for by this Decision and Order is denied.

8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2021, 2022 & 2023.
10. This Decision and Order is effective for purposes of appeal on September 17, 2026.[46]

SIGNED AND SEALED: September 17, 2026

SEAL

____
Steven A. Keetle, Commissioner

____
Jackie S. Russell, Commissioner

[46] Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.