

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

Kent L. Van Briesen,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 17R 0250

Decision and Order Affirming the  
Determination of the Sarpy  
County Board of Equalization

Background

1. The Subject Property is 1,976 square foot two-story lakefront home, with a legal description of: Lot 172 Hanson’s Lakes, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$212,105 for tax year 2017.
3. Kent L. Van Briesen (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$196,500 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$212,105 for tax year 2017.
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 October 30, 2018, at the Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Kent L. Van Briesen was present at the hearing.
8. Robert White and Jackie Morehead from the Sarpy County Assessor’s Office were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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

<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> 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 (2009).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleges that the assessment of the Subject Property is not accounting for the condition of the lot due to the raising of the road that runs adjacent to the Subject Property and a pipeline easement that runs across the lot. Additionally the Taxpayer alleges that the removal of trees and the gravel driveway of the Subject Property reduces the value of the lot.
17. The Taxpayer stated that the lot sunk five feet since the road was raised approximately ten years ago, and the change in elevation has caused water damage to the lot.
18. The Taxpayer further stated that the cutting down of trees as part of the pipeline easement changed the flow of the wind across the Subject Property causing damage to the roof of the improvements located on the Subject Property.
19. The employees from the County Assessor’s office stated that the valuation determination made by the county’s assessment model does not take into account the presence or lack of trees or other landscaping, and that a gravel drive does not add any value to the assessment while a concrete driveway would.
20. The Taxpayer alleged that the sand point well was a detriment to the value of the Subject Property. He stated that he thought it would take approximately \$7,000 to replace it with

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<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

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

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

a newer cased well, but he acknowledged that he had not obtained any estimates for this work.

21. The employees from the County Assessor's office indicated that they were unable to determine what if any difference a sand point well versus a newer cased well made on the value of a property located in the Hanson's Lake subdivision.
22. The County Board presented the Property Record File (PRF) and protest materials for the Subject Property. These materials indicate that the lot value of the Subject Property has been reduced from the lot value set for comparable properties due to the pipeline easement and the road.
23. The Taxpayer alleges that the County is not sufficiently accounting for the condition of the improvements located on the Subject Property.
24. The original structure on the Subject Property was constructed in 1953 and rebuilt in 1995, re-using materials from the original structure. For example, the Taxpayer stated that the floor joists for the second floor are the re-used ceiling of the original structure with visible notches from their prior use as ceiling beams.
25. The Taxpayer stated that the siding on the structure had deteriorated and that he had obtained bids to repair it. However, these bids were not provided to the Commission at the hearing.
26. The PRF for the Subject Property indicates that the condition rating of the improvements on the Subject Property was Fair+ and that it received a 5% functional depreciation.
27. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
28. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value."<sup>10</sup>
29. The County Board also presented the PRFs for other similar properties in the Hanson's Lakes subdivision. These PRFs indicate that differences in the properties' assessed values can be attributed to differences in the properties. These PRFs also show that only the Subject Property is receiving any functional depreciation.
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.

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<sup>9</sup> See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

<sup>10</sup> Appraisal Institute, Appraising Residential Properties, at 334 (4th ed. 2007).

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 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 89,000
<u>Improvements</u>	<u>\$123,105</u>
Total	\$212,105

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 2017.
7. This Decision and Order is effective on May 31, 2019.

Signed and Sealed: May 31, 2019

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Steven A. Keetle, Commissioner