

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

RICHARD C. OXLEY  
APPELLANT,

CASE NOS: 22R 0421, 21R  
0441

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
AFFIRMING  
THE DECISION OF THE  
LANCASTER COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property consists of a residential parcel in Lancaster County, parcel number 16-19-211-007-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$276,300 for tax years 2021 and 2022.
3. Richard C. Oxley (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$276,300 for tax years 2021 and 2022.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 12, 2023, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Richard C. Oxley was present at the hearing for the Taxpayer.
8. Tim Johns (the 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.<sup>1</sup>
10. The Commission's review of a 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 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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<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, 759 N.W.2d 464, 473 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<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, 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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer stated the current assessment is high as compared to a nearby home with a lower assessment (the "Neighbor's House").
17. The Taxpayer provided a detailed information packet with information about the Neighbor's House showing similarities and differences that he feels affect the value. The Taxpayer also provided his review of "Like Houses" near the Subject Property.
18. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
19. The Taxpayer did not present the Property Record Files (PRFs) for the Neighbor's House. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property.<sup>10</sup> This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject

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<sup>7</sup> *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).

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

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

<sup>10</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 2, 2023, 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.*

Property. The Appraiser stated the Subject Property is in a neighborhood with 522 other ranch style homes and his price per square foot is close to the middle of that group of homes. The Appraiser provided five comparables showing the Subject home is being valued fairly and equally with similar houses.

20. The Appraiser stated the Taxpayers comparable home at 7510 S 36<sup>th</sup> Street is smaller square footage and does not have any basement finish as compared to the Subject Properties basement with 1,000 square feet of basement finish.
21. The information presented by the Taxpayer supports the position that the difference in value between the Subject Property and the Neighbor's House is due to the difference in characteristics of the properties.
22. The Taxpayer's analysis, although detailed, is not an accepted method of mass appraisal and does not meet professionally accepted appraisal standards.
23. 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.
24. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

#### **IV. ORDER**

##### **IT IS ORDERED THAT:**

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are affirmed.
2. The taxable value of the Subject Property for tax years 2021 and 2022 is:

Land	\$ 55,000
<u>Improvements</u>	<u>\$ 221,300</u>
Total	\$ 276,300

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 years 2021 and 2022.
7. This Decision and Order is effective on January 12, 2024.

Signed and Sealed: January 12, 2024




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James D. Kuhn, Commissioner