

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

LUCILLE E. MCCALL TRUST
APPELLANT,

CASE NOS: 21R 0696 & 22R
0765

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 11-02-400-031-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$377,200 for tax years 2021 and 2022.
3. Lucille E. McCall Trust (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 \$377,200 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 December 21, 2022, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mark R. McCall 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 1.¹
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 Taxpayer stated the appeal is focused on the improvement value and not the land value.
17. The Taxpayer stated that several items on the Subject Property, such as windows, doors, flooring, paint and concrete in the driveway and sidewalk need repaired or replaced entirely. The Subject Property had been smoked in for the past 50 years making multiple coats of paint necessary. The Subject Property is mostly original as no updates have been done to the property in many years and they are starting to renovate.
18. The Taxpayer feels the Subject Property needs to be compared to homes that are in closer proximity.
19. The Appraiser stated he had inspected the home and lowered the rating to Fair, which is a low as he could rate a home that is livable. Although the home is of low condition, the fact that it is situated on 8.9 acres makes it very desirable in the current market. The Appraiser provided three comparable sales to show the current assessment is fair and equitable with similar properties.
20. The Taxpayer listed numerous items that need repaired or replaced but failed to quantify how those items affected the assessed value. No property record files of comparable properties were provided to show the current assessment was incorrect or

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).

the Subject Property was being treated differently than other similar properties.⁹

21. 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.
22. 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	\$200,000
<u>Improvements</u>	<u>\$177,200</u>
Total	\$377,200

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.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on September 28, 2022, 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.*

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 May 12, 2023.

Signed and Sealed: May 12, 2023



James D. Kuhn, Commissioner