

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

TRACEY L. LATTURE
APPELLANT,

CASE NO: 23A 0490

V.

**DECISION AND ORDER
REVERSING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION**

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved agricultural parcel in Lancaster County, parcel number 14-16-100-006-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$446,300 for tax year 2023.
3. Tracey L. Latture (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$446,300 for tax year 2023.
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 July 26, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Tracey Latture was present at the hearing for the Taxpayer.
8. Sue Bartek (Appraiser) and Paul Hattan 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 Subject Property contains 78.24 acres made up of primarily grassland with several outbuildings and a one-story, single family residential property built in 1965 with 1,104 square feet (SF) above grade, basement area of 1,104 SF with no finish, 8 plumbing fixtures, attached garage of 416 SF, a quality rating of average (3), and a condition/desirability/utility (CDU) rating of average minus (3).
17. The Taxpayer attested that the Subject Property has been part of an adverse possession ruling of which .082 acres of the Subject Property land was awarded to the adjoining landowner in April 2023.
18. The Taxpayer stated that ongoing issues with the adjoining neighbor's thorny locust trees along the creek line, as well as fencing and additional creek issues adversely affect the Subject Property value.
19. The Taxpayer did not provide additional information to quantify any land adjustments to the property based on the issues discussed.
20. The Appraiser stated that the property was inspected prior to the hearing and a new opinion of value was determined for the improvements. The Appraiser described the outbuildings had no contributory value due to condition and the CDU rating of the

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).

house should be adjusted to fair (2) supporting a new total value of \$419,200 for the property.

21. No information was provided to the Commission for means of establishing how much waste land and how much grassland may be affected by the court ruling that granted .082 AC to the adjacent property owner or the current valuation of that portion of the land.
22. The Taxpayer questioned many issues in regard to soil capabilities, issues with the adjoining landowner court ruling, and resources available for assistance with the property.
23. Other than taxable value, the Commission's review is limited to questions that were both a basis for the County Board's decision appealed from and raised in the proceeding before the Commission.⁹ The Commission cannot address questions "outside the scope of its limited statutory authority."¹⁰
24. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

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 2023 is vacated and reversed.

⁹ Neb. Rev. Stat. § 77-5016(8); see *Upper Republican NRD v. Dundy Cty. Bd. of Equal.*, 300 Neb. 256, 276-77, 912 N.W.2d 796, 809-10 (2018).

¹⁰ *Upper Republican NRD v. Dundy Cty. Bd. of Equal.*, 300 Neb. 256, 275, 912 N.W.2d 796, 809 (2018).

2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$285,500
<u>Improvements</u>	<u>\$133,700</u>
Total	\$419,200

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.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2023.
7. This Decision and Order is effective on August 6, 2024.

Signed and Sealed: August 6, 2024



Jackie S. Russell, Commissioner