

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

SHADY CREEK, LLC
APPELLANT,

CASE NO: 23C 0819

V.

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

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Lancaster County, parcel number 16-08-422-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$1,004,300 for tax year 2023.
3. Shady Creek, LLC (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 \$1,004,300 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 December 10, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. David Clausen was present at the hearing for the Taxpayer.
8. Jacob VanPelt (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 Subject Property is a multi-tenant, commercial building with 8,107 square feet with a leased commercial structure rating of average plus (5) according to the Property Record File (PRF).
17. The Taxpayer stated that due to vacancies in 2023, the net operating income has been affected and therefore, created an arbitrary or unreasonable valuation based on an income approach to value.
18. Income information from 2023 would not be used to set the property valuation for January 1, 2023, but rather could be used as part of the analysis for 2024 property valuations.
19. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.⁹
20. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁰ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹¹
21. The Appraiser stated that an income approach to value model with typical income and expense data from the local market is used to set the Subject Property valuation. The structure rating

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).

⁹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

¹⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

- of the property (in this case, average plus) dictates the income model used for the property.
22. The Taxpayer has not provided information to demonstrate that the Subject Property's structure rating of average plus (5) is arbitrary or unreasonable.
 23. The Appraiser provided a list of sold commercial properties to show that the valuation of the Subject Property falls within range of the local market data.
 24. 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.
 25. 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.

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

Land	\$ 233,100
<u>Improvements</u>	<u>\$ 771,200</u>
Total	\$1,004,300
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 year 2023.

7. This Decision and Order is effective on January 8, 2025.

Signed and Sealed: January 8, 2025



Jackie S. Russell, Commissioner