

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

ROZANEK FUNERAL HOMES  
INC.  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NO: 23C 0841

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

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Lancaster County, parcel number 17-20-406-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$1,013,400 for tax year 2023.
3. Rozanek Funeral Homes Inc. (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 \$1,013,400 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 November 5, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Rodney Rozanek was present at the hearing for the Taxpayer.
8. Jeff Johnson 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 Subject Property is a commercial facility operating as a mortuary/funeral home facility in Lincoln, Nebraska. The structure features 7,104 square feet (SF) above grade, basement area of 4,340 SF, and an attached storage area of 1,000 SF according to the provided Kubert Appraisal Report submitted by the Taxpayer.
17. The Appraiser submitted a Property Record File (PRF) for the Subject Property which differs slightly in size showing a Gross Building Area on page 1 as 12,032 SF, while the sketch shows above grade size of 7,076 SF, and attached storage area of 1,500 SF.
18. The Taxpayer attested that the submitted appraisal report completed by Kubert Appraisal Group with effective date of October 25, 2022, for purposes of determining market value, is a more accurate reflection of value for 2023. The Taxpayer asserted the value of the Subject Property for tax year 2023 should be \$1,870,000 as indicated in the appraisal report.
19. The original 2023 valuation for the Subject Property was set at \$1,013,400.
20. The Appraiser stated that after an inspection and discussions with the Taxpayer, a new opinion of value was submitted to the

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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).

County Board for review during the protest process of \$1,364,076.

21. The Appraiser attested that the model used in valuing the Subject Property is based on an income approach used to value all similarly used properties. There has not been a sale of a mortuary property for comparison and most other facilities in Lincoln being used as mortuary/funeral homes are single family home conversions which are not comparable in style.
22. The submitted Referee/Coordinator Report indicates that the Taxpayer's appraisal was given no weight in the referee's review process due to a difference in opinion of the comparable properties used operating as daycare and office facilities. The Taxpayer attested that the Subject Property was built to accommodate a remodel into a different use as supported by the construction description (pg4-5) within the Kubert Appraisal, as well as within the Highest and Best Use analysis (pg8). Further, the Reconciliation section on page 9 lends rational support to the comparable sales chosen by Kubert.
23. The County Board chose not to change the valuation of the property from \$1,013,400 and no reference was made to the Appraiser's new opinion of value of \$1,364,076.
24. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>9</sup> Therefore, the Commission gives the independent appraisal the most weight.
25. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or

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<sup>9</sup> *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

unreasonable and the decision of the County Board should be reversed.

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

Land	\$ 789,100
<u>Improvements</u>	<u>\$1,080,900</u>
Total	\$1,870,000

- 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 November 25, 2024.

Signed and Sealed: November 25, 2024



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Jackie S. Russell, Commissioner