

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

MARY JONES
APPELLANT,

CASE NO: 23R 0088

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 residential parcel in Lancaster County, parcel number 17-28-113-011-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$453,000 for tax year 2023.
3. Mary Jones (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 \$453,000 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 June 13, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jaqueline S. Russell.
7. Mary Beth and Lowrennice Jones were present at the hearing for the Taxpayer.
8. Tim Johns (Appraiser) and Priscilla Hrubby were 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

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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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 one-story, single family residential home with 1,984 square feet (SF) above grade, a walkout basement of 1,984 SF with 1,300 SF of minimal finish, an attached 520 SF garage, and a newly constructed accessory dwelling unit (ADU - also labeled as guest cottage by the County Assessor) with 720 SF. The overall quality rating is good (4) and the overall condition/utility/desirability (CDU) rating is typical (4).
17. The Taxpayer stated that the basement of the main residence has structural issues and pre-existing support beams need replacements.
18. The Appraiser stated that due to the condition of the rest of the property as indicated by the Property Record File (PRC) on page two, the CDU rating is appropriate for the description and equalized with other like condition properties in Lancaster County.

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

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).

19. The Taxpayer attested that as of January 1, 12:01am, the ADU was not 100% complete as the property record file (PRF) indicates on page 4.
20. The Taxpayer produced five pictures with various date stamps between December 26th and December 31st, 2022, to indicate the level of completion of the ADU.
21. The Appraiser attested that the ADU appears to be approximately 50% complete for 2023.
22. The Taxpayer showed that a recommendation from the referee to the County Board of Equalization showed an opinion of value of \$337,300.
23. Clear and convincing evidence was not produced to support the referee's indicated value of the Subject Property.
24. The Appraiser provided a new opinion of value of \$385,014 based on the Taxpayer's evidence and testimony showing the ADU was only 50% complete as of the January 1, 2023 assessment date.
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 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 reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

| | |
|---------------------|------------------|
| Land | \$ 48,300 |
| <u>Improvements</u> | <u>\$336,714</u> |

Total \$385,014

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 June 27, 2024.

Signed and Sealed: June 27, 2024



Jackie S. Russell, Commissioner