

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

JEFF G. GALL  
APPELLANT,

CASE NO: 23R 0140

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 residential parcel in Lancaster County, parcel number 23-22-401-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$1,139,300 for tax year 2023.
3. Jeff G. Gall (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 \$1,139,300 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 August 5, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Jeff Gall was present at the hearing for the Taxpayer.
8. Sue Bartek (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.<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 one-story, single-family home built in 1982, renovated in 2014, with 4,225 square feet (SF) above grade, walkout basement area of 5,126 SF with 3,500 SF full finished, 24 plumbing fixtures, three fireplaces, quality of good (4), condition/desirability/utility (CDU) rating of typical (4), attached garage of 1,413 SF, and a newer farm utility building with 1,152 SF, which all sits on 3.67 acres of land.
17. The Taxpayer stated that the increase in valuation is substantially more than the increases of the comparable properties submitted.
18. The Taxpayer provided a Comparable Sales Report with written notes for each property with several of the previous year valuations for each to show a comparison of the amount of percentage increase per property in relation to the purchase prices and the Subject property.
19. The Appraiser discussed the methodology behind setting property valuations and the components of contributory value in the assessment process.
20. The Appraiser submitted the same Comparable Sales Report with the Property Record Files for each comparable listed. The Appraiser then detailed the components of comparability and adjustments made to the sale prices based on professionally

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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).

accepted mass appraisal practices to support the Subject property valuation.

21. The Appraiser stated that the Subject property resides in a rural neighborhood in which a revaluation was conducted for 2023. As such, the valuation results will be varying degrees of percentage increases (or decreases) to each property in the market study area dependent upon the property components and comparable sales within their study period.
22. The Appraiser also provided a document which indicated that the Subject property is the largest property in the neighborhood which will have a bearing on total value. The document indicated that the average total living area in the neighborhood is 2,493 SF, whereas the Subject property houses 4,225 SF.
23. The Taxpayer stated that the increase in value was arbitrary or unreasonable due to water availability issues to the Subject property.
24. The Taxpayer stated that the water availability issues arose after January 1, 2023, as a result of where the Subject property parcel was split from a larger 80-acre tract of land when purchased in October 2022. The surveyed split severed the Subject property from its servicing water meter and caused issues between the water provider and the Taxpayer which was remediated at the Taxpayer's expense during calendar year 2023.
25. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>9</sup> This does not leave a course of action to adjust value due to the water availability issue that occurred after January 1, 2023.
26. 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.
27. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

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<sup>9</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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	\$ 137,000
<u>Improvements</u>	<u>\$1,002,300</u>
Total	\$1,139,300

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 August 29, 2024.

Signed and Sealed: August 29, 2024



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Jackie S. Russell, Commissioner