

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

DAVID L. WORKMAN
APPELLANT,

CASE NO: 23R 0156

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 single-family residential parcel in Lancaster County, parcel number 10-35-414-008-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$143,300 for tax year 2023.
3. David L. Workman (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 \$143,300 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 March 21, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. David L. Workman was present at the hearing for the Taxpayer.
8. Bret Smith (The 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 one-story residential dwelling with 920 square feet (SF), built in 1919 with a quality rating of 3 (average), a condition rating of 2 (fair), and an additional 700 SF structure on the lot, purchased in April of 2018 for \$79,000. It is located within an older neighborhood in Lancaster County.
17. The Taxpayer stated his opinion of the condition of the property based on its age was "good" due to its straight foundation, adequately sealed windows, and newer roof (2019) and sewer (2020). There is no deferred maintenance to be addressed in the Taxpayer's opinion.
18. The Taxpayer opined the property should be valued at its purchase price of \$79,000 and should not be based on comparable sales in a market that is drastically increasing yearly.
19. "All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation."⁹
20. "Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1)

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. § 77-201(1)-(3) (Reissue 2018).

sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁰

21. The Appraiser attested that the condition of the property was downgraded in 2021 after a physical inspection that showed various plaster cosmetic issues and original construction in the bath and kitchen. The Subject Property also had a second structure with 700 SF that was being valued as living space but utilized as a shed due to excessive damage. The Property Record File (PRF) was updated to reflect this component change from living space to a shed and valued accordingly.
22. The Appraiser presented PRFs that were utilized in setting the 2023 valuation but also provided a new comparable sales analysis resulting in a different opinion of value for the Subject Property.
23. Competent evidence was produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. Clear and convincing evidence was provided 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.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 35,000
<u>Improvements</u>	<u>\$ 85,900</u>
Total	\$120,900

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

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 APRIL 8, 2024.

Signed and Sealed: APRIL 8, 2024



Jackie S. Russell, Commissioner