

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

ANDREW SCHMIDT
APPELLANT,

CASE NO: 23R 0180

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

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

This Corrected Decision and Order is issued to correct a typographical error in paragraph 31 of the Commission’s July 9, 2024, Order.

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Lancaster County, parcel number 16-09-441-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$526,200 for tax year 2023.
3. Andrew Schmidt (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 \$526,200 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 12, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie Russell.
7. Andrew J. Schmidt was present at the hearing for the Taxpayer.

8. Tim Johns (Appraiser) and Priscilla Hruby 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 built in 2008 with 1,698 square feet (SF) above grade, a walkout basement with 2,044 SF of which 1,100 SF is fully finished. There are 16 plumbing fixtures, a 382 SF wood deck, and two attached garages totaling 946 Sf. The quality rating is good (4) with a condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer opined that the comparable properties used for sales comparison purposes by the county Assessor's office create an inaccurate representation of market value for the Subject.
18. The Taxpayer utilized a 3rd party program available on the internet to filter sales for analysis with the Subject property with parameters focused on sales date, age, location, and size.
19. The Taxpayer provided Property Record Files (PRF) for three "similar properties" for equalization analysis showcasing lower assessed values within the same market area and having a larger living area than the Subject.

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).

20. After review of the PRFs for the similar properties, the property SF is in fact larger for each comparable and the quality and CDU ratings match the Subject, however, dissimilarities in other contributory values such as the land on page one and the residential components of each on page three of the PRFs appear to appropriately place the Subject Property value higher than the similar property's valuations based off a contributory cost value analysis using generally accepted mass appraisal practices.
21. The Taxpayer also submitted PRFs for comparable sales built within five years of the Subject, located within a four-mile radius, and containing a SF within 15% of the Subject.
22. After review of the sales comparable properties submitted by the Taxpayer using generally accepted mass appraisal practices, it is apparent that the quality rating is lower on all comparable properties, creating a disconnect to the Subject property that was not addressed by the Taxpayer to quantify what an appropriate adjustment to each comparable would be to equalize the analysis.
23. Since the comparable properties are all rated as an average quality construction (3) as opposed to the good quality construction (4) of the Subject property, this creates a need for an increase to the sales price based on inferiority of the comparable according to sales approach analysis. Structures of higher quality cost more to build per unit of measure and command higher prices. If the comparable property is inferior in some respect, the sale price is adjusted upward, just as if it is superior, it will be adjusted downward.⁹
24. It should also be addressed that since the Assessor's office is responsible for using market sales within the time period of October 1, 2020, thru September 30, 2022, in setting the 2023

⁹ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

valuations,¹⁰ 8112 Hunters Ridge Rd, 2310 Scotch Pine Trl, and 9620 Keystone Dr. fall outside of that acceptable date range for analysis.

25. The Appraiser attested that the Subject property neighborhood was part of a revaluation for 2023. Property revaluations can cause increases and decreases across the properties involved due to market analysis and adjustments.
26. The Appraiser stated that the Subject property is part of the “high model” analysis and described properties associated with this model as those generally built with higher qualities, contained in an area that see longer exposure times to the market and therefore, less sales for analysis.
27. The Appraiser stated that the Subject property’s 2020 sale was used in the analysis and was given a time adjustment according to generally accepted mass appraisal practices since the property was an arm’s length transaction and therefore, one the best representations of the value for the Subject property.
28. The Appraiser reviewed the components of the Subject property with the Taxpayer at the hearing to verify the PRF data since no walk thru of the Subject took place prior to the hearing. The Appraiser also explained the quality rating for the subject property and the difference in a lesser quality construction. The Taxpayer attested that the property data was correct and agreed with the quality rating.
29. The Appraiser provided a Comparable Sales Report with PRFs by which the comparable properties have been adjusted through market analysis to develop a valuation for the Subject property.
30. 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.
31. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or

¹⁰ 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

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	\$113,900
<u>Improvements</u>	<u>\$412,300</u>
Total	\$526,200

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 July 10, 2024.

Signed and Sealed: July 10, 2024



Jackie S. Russell, Commissioner