

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

SARAH SMITSEK
APPELLANT,

CASE NO: 23R 0482

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 17-34-105-007-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$505,400 for tax year 2023.
3. Sarah Smitsek (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 \$520,000 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 July 11, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Colin and Sarah Smitsek were present at the hearing for the Taxpayer.
8. Tim Johns (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 two-story, single family residential property built in 1971, with 3,470 square feet (SF) above grade, basement area of 1,421 SF with no finish, 18 plumbing fixtures, a quality rating of good (4), a condition/desirability/utility (CDU) rating of average plus (5), and a lot size of 21,526 SF.
17. The Taxpayers stated that the valuation increase was arbitrary and unreasonable.
18. The Taxpayers stated that the original 2023 protested valuation was \$505,400. During the County's protest process, the Assessor's office conducted a physical inspection of the property and discovered physical characteristics that changed their opinion of value to \$520,000.
19. The Appraiser stated that during the physical inspection, it was discovered that the upper living square footage was short by 10 SF, the plumbing fixture count was short by two fixtures, and there was a rear covered porch of 132 SF not accounted for. This information is included on the submitted Property Record File (PRF) page two, parcel comments.
20. The Taxpayers provided five PRFs of sales for analysis of a calculated price per square foot (PPSF) for each property to use in comparison to their calculated PPSF of the Subject Property.

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).

21. Two of the sales were comparable properties also used by the County Assessor for sales comparison analysis. (7449 Poplar Rd sold on 4/15/2021, and 1531 Buckingham Dr. sold on 8/27/2021.)
22. The other three sales provided were 7201 Whitestone Cir sold on 12/8/2022, 7300 Whitestone Dr. sold on 4/26/2023, and 2001 Pacific Dr. sold on 5/24/2023.
23. Market sales must take place within the time period of October 1, 2020, thru September 30, 2022, in setting the 2023 valuations,⁹ therefore rendering the above sales listed in paragraph 22 as non-compliant in their use.
24. The Taxpayers' provided PPSF analysis was calculated using the property's total assessed value divided by the total SF of all finished areas (main floor, upper floor, and basement finish) for each property.
25. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁰ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹¹
26. Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.¹²
27. When comparing physical characteristics of like properties, 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.¹³
28. The Subject Property has above grade square footage of 1,785 on the main floor with 1,685 SF upper living. 7449 Poplar Rd has above grade SF of 1,396 on the main floor with 1,320 SF upper living; and 1531 Buckingham Dr has above grade square footage

⁹ 350 Neb. Admin. Code, ch 17, § 003.05A (7/15/2017).

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

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹² Neb. Rev. Stat. § 77-1371 (Reissue 2018).

¹³ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

of 1,167 on the main floor with 1,288 SF upper living, showing an inferiority of the comparable properties to the Subject Property above grade square footage.

29. The cost approach derives a value indication “by estimating the cost new as of the effective date of the appraisal to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive; deducting depreciation from the total cost; and adding the estimated land value¹⁴.
30. The Appraiser attested that the main floor living area will have the highest PPSF contributory value, followed by the upper living area, and lastly, the basement finished area using cost approach analysis.
31. The Taxpayer’s opinion of value was determined by a PPSF comparison of the Subject Property to the provided sales without the use of adjustments to any differing physical characteristics prior to analysis. The Taxpayer’s method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
32. The Taxpayers stated it was unreasonable to adjust the Subject Property value upward during the protest process based on the information gathered during the physical inspection.
33. The Appraiser attested that a cost approach analysis combined with a sales approach analysis is used to set the valuation of the Subject Property. Therefore, it is imperative that the data gathered by the Assessor is accurate and complete for the property when setting value.
34. The Appraiser provided a Comparable Sales Report to support the Subject Property valuation with recently sold properties along with their PRFs, detailing their components of comparability and adjustments to the sale prices based on

¹⁴ *Cost Approach, The Dictionary of Real Estate Appraisal* (7th ed. 2022)

professionally acceptable mass appraisal practices to set the Subject Property valuation.

35. 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.
36. The Taxpayer has not 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 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	\$ 66,000
<u>Improvements</u>	<u>\$454,000</u>
Total	\$520,000
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 July 25, 2024.

Signed and Sealed: July 25, 2024



Jackie S. Russell, Commissioner