

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

BRIAN ANDELT
APPELLANT,

CASE NO: 23R 0502

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 02-17-304-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$673,600 for tax year 2023.
3. Brian Andelt (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 \$673,600 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 September 9, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Brian Andelt was present at the hearing for the Taxpayer.
8. Sue Bartek (Appraiser) and Paul Hattan 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
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 home built in 1994 with 2,753 square feet (SF) above grade, basement area of 1,689 SF with 1,200 SF full finish, 18 plumbing fixtures, attached garage of 1,055 SF with 1,055 SF sub garage area. The quality rating is good (4) and the condition/desirability/utility (CDU) rating is typical (4).
17. The Taxpayer stated that the valuation increase is arbitrary and unreasonable as it is now above the appraised value from November 21, 2021, the time of purchase.
18. The Taxpayer stated that conditional issues of radon mitigation, basement water leakage, concrete patio sinkage, rotting window frames, cracking stucco, and a bathroom leak, decrease the value of the property.
19. The Taxpayer provided estimates for replacing the concrete patio (\$6,883.12), waterproofing the exterior at the site of the basement leak (\$6,438.40), and for replacing the windows with a higher quality window (\$103,242). All estimates were provided to the Taxpayer in August of 2024.
20. The Appraiser stated that there was no successful contact made with the Taxpayer to perform an on-site inspection of the property prior to the hearing.

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. The Appraiser stated that the conditional concerns of the Taxpayer fall within the deferred maintenance of a typical CDU rated property and would not be cause for a CDU adjustment to be made.
22. The appraisal submitted by the Taxpayer also shows the property with an average condition rating. The Taxpayer did not demonstrate if all issues discussed are a result of events during the 2022 calendar year only.
23. While the independent appraisal submitted is considered competent evidence, the effective date is 13 months prior to the effective date of the 2023 valuation and therefore, the Commission gives it little weight due to market volatility.
24. The Taxpayer opined that comparable properties from Crete should be used for analysis in setting the Subject Property's valuation and submitted five Property Record Files (PRF) for the Commission to analyze.
25. Only the property located at 15601 Lakeside Estates Dr shows a recent sale within the sales study period required to be used by the Assessor's office of October 1, 2020, to September 30, 2022,⁹ in setting the January 1, 2023, values.
26. Following the review of the PRC for 15601 Lakeside Estates Dr, there are many components of data that would require an adjustment to the sales price of the property using professionally accepted mass appraisal methods to bring the data closer to that of the Subject Property including: quality, above grade living area, basement area, basement finish, fireplace count, plumbing fixture count, and porches/decks.
27. 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.¹⁰
28. The Appraiser stated there was a revaluation conducted to the Subject Property neighborhood for 2023. As such, the result will

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

¹⁰ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

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.

29. The Appraiser stated that the Subject Property is valued using the sales that take place in comparable acreage locations around Lancaster County.
30. 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 professionally accepted mass appraisal methods.
31. 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.
32. 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	\$101,900
<u>Improvements</u>	<u>\$571,700</u>
Total	\$673,600

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 September 24, 2024.

Signed and Sealed: September 24, 2024



Jackie S. Russell, Commissioner