

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

LINH T. NGO
APPELLANT,

CASE NO: 23R 0551

V.

**DECISION AND ORDER
VACATING AND REVERSING
THE DECISION OF THE
LANCASTER COUNTY
BOARD OF EQUALIZATION**

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property contains a 1,033 square foot residence located at 1857 J. Street, in the city of Lincoln, in Lancaster County; parcel number 10-25-145-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$222,700 for tax year 2023.
3. Linh T. Ngo (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined the taxable value of the Subject Property was \$222,700 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 26, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
7. Linh Ngo was present at the hearing for the Taxpayer.
8. Bret Smith, an employee of the County Assessor, 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 Taxpayer purchased the Subject Property in 2018 for \$110,000 after it had been converted from a multiple-tenant rental home to a single-family home.
17. The County Assessor was not aware of the conversion until approximately 2022. No internal inspection was done during that time. The tax year 2023 assessment increased substantially, partly due to the conversion and partly due to market sales increases.
18. The property record file indicated the home had 700 square feet of partition finish in the basement. The Taxpayer stated this was incorrect, and that the basement was unfinished. The assessed value attributed to basement finish was \$13,050. The Commission finds there is sufficient evidence the Subject Property should be assessed without a value for basement finish.
19. The County Assessor determined the assessed value of the land component of the property should be \$28,000 rather than \$35,000. The Commission finds there is sufficient evidence the land component of the Subject Property should be assessed at \$28,000.

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. Neither party brought any other information to the hearing that would warrant any additional change in the assessed value of the Subject Property.
21. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.⁹
22. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.

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	\$ 28,000
<u>Improvements</u>	<u>\$174,650</u>
Total	\$202,650
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.

⁹ Evidence may have been adduced in this hearing that was not available to the County Board at the time of the protest proceedings.

7. This Decision and Order is effective on March 28, 2024.

Signed and Sealed: March 28, 2024



Robert W. Hotz, Commissioner