

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

DAVID DURAND
APPELLANT,

CASE NO: 23R 0657

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 16-11-303-010-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$666,500 for tax year 2023.
3. David Durand (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 \$666,500 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 October 9, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. David Durand was 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 one-story, single-family home built in 2004 with 2,368 square feet (SF) above grade, walkout basement area of 2,328 SF with 1,750 SF of full finish, 14 plumbing fixtures, two fireplaces, attached garage with 793 SF, quality rating of good (4), and condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer alleged that based on the properties similar in style to the Subject Property along the Himark Golf Course on Augusta Drive and Troon Drive, valuations are erroneous within the neighborhood and the value of the Subject Property is excessive.
18. The Taxpayer opined that the comparable sales to the Subject Property are being pulled from streets with properties of high value that causes inflation to the Subject Property, while other properties on Augusta Drive are still lower valued comparable to the Subject Property such as 8521 Augusta Dr and 8601 Augusta Dr which the Taxpayer labeled as "extraordinarily comparable".
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

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).

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) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.¹⁰
21. The Appraiser stated that the Comparable Sales Report submitted for review is not used to value the Subject Property but is used in support of the value of the Subject Property based on the data included and comparability of the sold properties to the Subject Property.
22. “A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market’s reaction to comparable and competitive properties.”¹¹
23. The Taxpayer provided several exhibits of different streets that detailed the property identification number, address, year built, and assessed values of the properties from each area, with a calculated mean home value. The Taxpayer did not provide the Property Record Files (PRF)s for any of the properties presented for comparison purposes. Without the details contained in the PRFs, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property.¹²
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (style, size, finish, condition, etc.), and location. It is important

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

¹¹ Appraisal Institute, *The Appraisal of Real Estate* 351 (15th ed. 2020).

¹² For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on July 5, 2024, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

- to look at the data included in the assessment records to determine comparability of any two, or more, properties.
25. The Taxpayer did not provide any valuation adjustments in their comparison for any differences in property data, or likeness, to the Subject Property.
 26. “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”¹³
 27. The Appraiser attested that the Himark model area contains properties of varying degrees of quality, condition, size, year built, and other differing components indicative of property value.
 28. The Taxpayer’s methodology of comparing values by street, without regard to the individual property data, is not a recognized method of property valuation based on generally accepted mass appraisal methods. The Commission gives the process no weight.
 29. 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.
 30. 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.

¹³ Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$158,100
<u>Improvements</u>	<u>\$508,400</u>
Total	\$666,500

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 October 31, 2024.

Signed and Sealed: October 31, 2024



Jackie S. Russell, Commissioner