

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

THOMAS BASTIEN
APPELLANT,

CASE NO: 23R 0743

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 16-09-437-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$883,900 for tax year 2023.
3. Thomas Bastien (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 \$883,900 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 August 2, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Thomas Bastien 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 residence built in 2001 with 2,700 square feet (SF) above grade, walkout basement area of 2,686 SF with 2,200 SF full finish, 19 plumbing fixtures, two fireplaces, quality rating of good (4), and a condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer stated that the Subject property valuation is disequalized amongst the neighboring properties.
18. The Taxpayer provided a spreadsheet analysis of the Subject property and two other properties located on the same cul-de-sac: 6420 Black Forest Dr and 6425 Black Forest Dr.
19. The spreadsheet showed a percentage comparison between the Subject property's living area, basement area and finish, and lot size in relation to the two other properties listed.
20. The spreadsheet did not make any quantitative or qualitative adjustments in valuation for any features listed.
21. The Taxpayer provided Property Record Files (PRF) for the comparable properties. After the Commission's review of the PRFs, the properties submitted are not true comparable properties to the Subject based on professionally accepted mass appraisal practices as the Subject property is a one-story style home, and the comparable properties are both 1.5-story style homes.

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).

22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
23. Style of property construction is amongst the physical characteristics in comparability. One-story properties, such as the Subject property, cost more to construct than a 1.5 story or two-story property as the foundational footprint is larger. It is cheaper to build a single property upward than it is to build outward.
24. The Appraiser attested that ranch style properties are more desirable in the market and therefore, command higher prices than a 1.5 or two-story home.
25. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁰
26. The Appraiser stated that the Subject property was valued using a combination of the cost approach and the sales comparison approach within multiple regression analysis.
27. “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
28. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s

⁹ International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

¹⁰ *Krings v. Garfield Cty. Bd. of Equal.*, 286 Neb. 352, 357-58, 835 N.W.2d 750, 754 (2013); *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 577, 471 N.W.2d 734, 742 (1991).

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

unknown value.” Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

29. 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 practices.
30. The Taxpayer provided a “CMA Spreadsheet” dated 3/24/2023 that opined an “Avg Adj Price Price” of \$839,458 for the Subject property.
31. The Taxpayer did not provide PRFs for the properties contained on the spreadsheet and therefore, the Commission could not analyze the comparability to the Subject property.
32. A CMA analysis is not conducted according to Uniform Standards of Appraisal Principles and Practices (USPAP) and therefore, the Commission gives the document no weight.
33. 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.
34. 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	\$151,800
<u>Improvements</u>	<u>\$732,100</u>
Total	\$883,900

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 4, 2024.

Signed and Sealed: September 4, 2024



Jackie S. Russell, Commissioner