

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

CATHY ZUEHLKE
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NO: 23R 0860

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Lancaster County, parcel number 09-12-414-008-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$272,200 for tax year 2023.
3. Cathy Zuehlke (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 \$272,200 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 21, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Cathy Zuehlke was present at the hearing for the Taxpayer.
8. Tim Johns (the Appraiser) and Priscilla Hruby 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, residential dwelling rated at an average quality (3), typical/average (4) condition, with 1,232 square feet (SF) above grade, and an 1,184 SF basement with 950 SF partition (full) finish. The property also features an attached garage and wood deck.
17. The Taxpayer stated that the Subject Property's valuation appears to be significantly higher than other properties, questioning equalization.
18. The Taxpayer submitted several Property Record Files (PRF) for properties located near the Subject Property to detail the amount of increase per property and to compare style.
19. The Taxpayer stated that the property located at 5110 Tipperary Trail is the most comparable yet is valued at \$232,600, a difference of \$39,600 below the Subject Property.
20. The Appraiser stated there was a revaluation conducted to the subject property neighborhood for 2023. As such, the result will 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.
21. The Appraiser stated that the Subject Property appears to have the same features as the 5110 comparable, however, the comparable only features two 3-fixture bathrooms and 400 SF

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).

minimal basement finish as opposed to the Subject Property features of three 3-fixture bathrooms and 950 SF full basement finish of which would both lead to a difference in valuation.

22. The Appraiser submitted interior photos from the internet listing of the Subject Property at the time of the Taxpayer's purchase to verify information with the Taxpayer since a physical inspection was previously declined.
23. The Taxpayer attested that other than a sink in the basement that had been capped off from use, all other information on the PRF was correct.
24. The Appraiser stated that the contributory value for a fixture in the Subject Property's Multiple Regression Analysis model was as shown on page 8 of the Lancaster County 2023 Residential Valuation Methodology packet. The contributory value coefficient is listed as 3853.1767.
25. 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.
26. Evidence may not have been presented to the County Board to make such a determination that the PRC was not an accurate reflection of the Subject Property.
27. Clear and convincing evidence has not been produced that there is an equalization issue within the neighborhood, but clear and convincing evidence has been produced that the determination of the County Board is arbitrary or unreasonable based on the Subject Property's own contributory values, and the decision of the County Board should be vacated.

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	\$ 55,000
<u>Improvements</u>	<u>\$ 213,345</u>
Total	\$ 268,345

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 APRIL 10, 2024.

Signed and Sealed: APRIL 10, 2024



Jackie S. Russell, Commissioner