

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

JESSICA L. HARRIS
APPELLANT,

CASE NO: 23R 0882

V.

DECISION AND ORDER
REVERSING 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 09-12-214-010-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$219,100 for tax year 2023.
3. Jessica L. Harris (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 \$200,000 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 February 29, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S Russell.
7. Valerie Harris and Terry Harris were present at the hearing for the Taxpayer.
8. Colin Emmons (the 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 Taxpayer provided a written statement which argued various characteristics of the Subject Property against four comparable properties which were all valued lower for the 2023 tax year.
17. The Taxpayer detailed areas of lot comparability, bathroom utility, condition, and financing terms, to argue that because of these differences, the valuation of the Subject Property was not equalized with the comparable sales and therefore, valued too high.
18. The Taxpayer stated that the Subject Property's differences in comparison were that the lot was \$3,000 higher, yet less upkept than other lots on the same block. The subject property only has a 3/4 bathroom verses the desirability of a full bathroom. There have been recent updates to the comparable properties, yet the Subject Property's condition rating was the same with no recent updates.
19. The taxpayer produced Property Record Files for the Subject Property and each comparable, along with a Comparable Sales Report, which were printed from the Lancaster County Assessor's website, on January 13, 2024, and detailed tax year 2024.

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. As stated in the Commission's Order for Hearing, property Record Files are to be obtained from the County Assessor's office to ensure the year of the appealed valuation is detailed, and not current year information.
21. The Appraiser produced property Record Files, matching each comparable submitted by the Taxpayer, for the 2023 tax year. The Appraiser stated the Subject property was physically inspected at the time of the protest and found to have property characteristics that needed to be adjusted in the data set which included the condition rating and basement finish.
22. The Appraiser stated these adjustments yielded a different opinion of value for 2023 and was presented as such to the County Board at the time of the protest to better equalize the Subject Property to the market. However, the County Board upheld their Referee's indicated value of \$200,000 for the 2023 tax year.
23. The Appraiser's revised opinion of value was \$192,900. The Commission finds this value to be the actual value of the Subject Property for tax year 2023 and is equalized with similar properties.
24. Competent evidence has been produced showing the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
25. Clear and convincing evidence has been produced showing the determination of the County Board is arbitrary or unreasonable 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	\$	30,000
<u>Improvements</u>	<u>\$</u>	<u>162,900</u>
Total	\$	192,900

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 March 18, 2024.

Signed and Sealed: March 18, 2024



Jackie S Russell, Commissioner