

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

SHAWN P. SCHULENBERG  
APPELLANT,

CASE NO: 23R 0889

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 09-36-204-003-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$813,400 for tax year 2023.
3. Shawn P. Schulenberg (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 \$813,400 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 July 11, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Shawn P. Schulenberg 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject property is a one-story, single-family home built in 2019 with 2,798 square feet (SF) above grade, 2,782 SF basement with 2,100 SF full finish, 18 plumbing fixtures, one fireplace, quality rating of good (4) and condition/desirability/utility (CDU) rating of typical (4). The property also has an attached garage with 1,386 SF according to the submitted Property Record File (PRF).
17. The Taxpayer stated the value of the Subject property is arbitrary due to inconsistencies within its data, and within comparable properties.
18. The Taxpayer provided two Home Valuation Analysis documents; one document of the chosen comparable property's sales prices in comparison to the Subject property, and the other of the assessed values of the comparable properties compared to the Subject property assessed value.
19. The two comparable sales used by the Taxpayer have listed sales dates of June 14, 2024, and April 24, 2024.
20. It must be addressed that the properties chosen by the Taxpayer for comparison sold outside the acceptable date range for properties required to be used in setting the 2023 Subject property valuation.

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

21. Properties used by the County Assessor in setting the January 1, 2023, values must be from the time period of October 1, 2020, thru September 30, 2022.<sup>9</sup>
22. The Taxpayer submitted the 2024 tax year property record files for the comparable properties discussed. The Commission considered the records submitted for data analysis, but it is inconclusive whether the data for the properties changed from 2023 to 2024, which may affect the record comparison to the Subject property.
23. The Taxpayer also provided a Property Condition Report conducted by Terrie Geer for Cornhusker Bank. It is unknown if Terrie Geer is a licensed appraiser, but the report was comprised in July 2023, not made retrospective to January 1, 2023, based on the inspection or completion date, and is not for purposes of indicating market value using Uniform Standards of Professional Appraisal Practices. Therefore, the Commission gives it no weight.
24. The Taxpayer stated that the Subject property attached garage data is inaccurate on the property record file. The Taxpayer showed an area of 18'x19' (totaling 342 SF) as being attached garage space rather than the Assessor's office indicated area of main floor living space.
25. The Appraiser attested that an appraisal from 2020 was present in the County's case file at the time of the hearing. The appraiser of the report conducted an interior inspection and detailed the indicated 342 SF discussed as being attached garage space.
26. The Appraiser stated that multiple regression analysis (MRA) was used to value the Subject property and provided a coefficient table in the submitted Lancaster County 2023 Residential Valuation Methodology. Due to the extensive nature of MRA, it was ordered by the Commission for the County to provide a new opinion of value based on the correction of the data to convert 342 SF main floor living area to 342 SF of attached garage area.

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<sup>9</sup> 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

27. The Appraiser submitted a new opinion of value for the Subject property improvements of \$651,200 to the Commission after the hearing.
28. The Taxpayer did not submit rebuttal evidence for the new opinion of value to the Commission after the hearing.
29. 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.
30. 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.

#### **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	\$144,600
<u>Improvements</u>	<u>\$651,200</u>
Total	\$795,800
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 August 29, 2024.

Signed and Sealed: August 29, 2024



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Jackie S. Russell, Commissioner