

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

MATTHEW A. JENKINS  
APPELLANT,

CASE NO: 23R 0919

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 17-34-124-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$500,100 for tax year 2023.
3. Matthew A. Jenkins (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 \$500,100 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 9, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Matthew Jenkins was present at the hearing for the Taxpayer.
8. Tim Johns (Appraiser) and Priscilla Hrubby were 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 residential home built in 1971 with 1,945 square feet (SF) above grade, basement area of 1,945 SF with 1,500 SF full finish, 17 plumbing fixtures, attached garage with 525 SF, quality rating of good (4), and a condition/desirability/utility (CDU) rating of average plus (5). The lot size is 11,428 SF.
17. The Taxpayer opined that the County Board did not take evidentiary support into account during their county protest, therefore creating an arbitrary valuation for the Subject Property.
18. The Taxpayer submitted a comparative market analysis (CMA) completed by a local realtor.
19. A CMA completed by a real estate agent is not required to follow Uniform Standards of Professional Appraisal Practice (USPAP) as an appraisal report completed by a licensed real estate appraiser would and therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
20. The Taxpayer submitted two independent appraisal reports, one by B. Hynek with an effective date of 1/1/2023, and the other by R. Johnson with effective date 3/14/2024, both attesting to USPAP in their completion.

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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. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>9</sup> Therefore, the effective date of the Johnson appraisal would not comply with the statutory deadline for the 2023 valuation year and is given little weight by the Commission for the 2023 valuation.
22. The Appraiser stated that the comparable properties chosen for the Hynek appraisal are not comparable to the Subject Property due to a difference in quality, most notably roof lines and fenestration.
23. The Taxpayer provided Property Record Files (PRF) for each comparable used by Hynek in the comparable analysis. The County describes the Subject Property as good quality, and all the comparable properties as average quality, supporting uniformity in their descriptions and analysis.
24. Since the comparable properties are all rated as an average quality construction (3) as opposed to the good quality construction (4) of the Subject Property, this creates a need for an increase to the sales price based on inferiority of the comparable according to sales approach analysis. Structures of higher quality cost more to build per unit of measure and command higher prices. If the comparable property is inferior in some respect, the sale price is adjusted upward, just as if it is superior, it will be adjusted downward.<sup>10</sup>
25. The Hynek appraisal describes all properties used in the report as having “Average-Good” quality and therefore, makes no adjustments for quality differences and gives no narrative to support the combined quality ratings.
26. The Commission agrees that lumping the quality of “average” and “good” together by Hynek does not allow for adjustments to be made for inferiority or superiority of the comparable properties to the Subject Property.

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<sup>9</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>10</sup> *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

27. The Appraiser attested that an interior inspection was completed prior to the hearing date. Adjustments were made to plumbing fixtures and basement finish SF which created a new opinion of value for the Subject Property.
28. 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.
29. Clear and convincing evidence has been produced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.

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

Land	\$ 70,000
<u>Improvements</u>	<u>\$410,200</u>
Total	\$480,200
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 July 29, 2024.

Signed and Sealed: July 29, 2024



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Jackie S. Russell, Commissioner