

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

JOSEPH MICK
APPELLANT,

CASE NO: 23R 1014

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 16-11-318-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$941,600 for tax year 2023.
3. Joseph Mick (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 \$941,600 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 26, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Joe and Tamra Mick were present at the hearing for the Taxpayers.
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 1.5 story, single family residential home built in 2001 with 3,117 square feet (SF) above grade, walkout basement area of 2,146 SF with 2,000 SF full finish, 16 plumbing fixtures, wood deck of 550 SF, an attached garage of 704 SF, quality rating of good (4), and a condition/desirability/utility (CDU) rating of average plus (5). The lot is 3.04 acres and also houses a detached garage of 550 SF. The kitchen was remodeled in 2022 per the Property Record File (PRF).
17. The Taxpayer stated that the 43% increase from the 2022 assessment value was arbitrary and unreasonable and argued that a better valuation mechanism be established in order to avoid large increases in one year.
18. All real property, other than agricultural land and horticultural land, is valued at 100% of its actual value.⁹
19. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a

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).

⁹ 350 Neb. Admin. Code, ch. 10 § 003.01A (10/26/2014).

property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.¹⁰

20. The Taxpayer argued that the comparable properties chosen by the County are dissimilar due to location within the Firethorn and Irongate neighborhoods, while they stated comparable properties were available for analysis in the Subject Property neighborhood of HiMark.
21. The Taxpayer stated that 9065 Turnberry Cir, 8725 Angeline Ct, and 5311 Troon Dr were acceptable comparable properties for the 2023 valuation but appear to no longer be available for review on the County's website.
22. The Taxpayer did not provide PRFs for the above-mentioned comparable properties for review by the Commission.
23. The Taxpayer provided analysis of a price per square foot (PPSF) calculation using three comparable properties. The properties chosen included 5525 S 96th St and 8625 Oakmont Dr which were also used as comparable properties by the Appraiser, and 9701 S 64th St which sold on 11/09/2022.
24. It is recognized that the Assessor's office is responsible for using market sales within the time period of October 1, 2020, thru September 30, 2022, in setting the 2023 valuations,¹¹ 9701 S 64th St would not have been available to use for analysis of setting the 2023 valuations for the Subject Property.
25. The Taxpayer submitted an unadjusted PPSF analysis of the assessed value of the improvements, divided by the total above

¹⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹¹ 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

grade SF for each property submitted, and also for each property used in comparison by the County.

26. “Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”¹²
27. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
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 unknown value.”¹⁴
29. The Taxpayer did not provide information that adjustments were made to the comparable properties prior to the PPSF analysis. It is apparent through review of the PRFs submitted that all comparable properties have components of contributory value (i.e. size, condition, fixture count, basement finish SF, etc.) that would need to be adjusted prior to a PPSF being established for comparison based on professionally accepted mass appraisal practices.
30. The Taxpayers submitted an appraisal report by an independent appraiser for review. The appraisal purported to conform with the Uniform Standards of Professional Appraisal Practice (USPAP). The Taxpayers attested that while the appraisal value is lower than the 2023 assessed value, it is also higher than the requested valuation and suggested PPSF analysis. The Taxpayers opine that because the comparable properties given for analysis sold for more than their assessed values at an average of 11%, the Subject Property should be valued at a

¹² Neb. Rev. Stat. § 77-1371 (Reissue 2018).

¹³ International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

¹⁴ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

percentage below the appraised valuation at a suggested rate of 10%.

31. Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁵
32. “[W]hile absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity.”¹⁶
“Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.”¹⁷
33. 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. The Appraiser also noted that the property condition was increased due to a remodel of the kitchen which will cause a higher contributory value for the CDU of the property then previously assessed.
34. The Appraiser attested that all properties are valued using Multiple Regression Analysis (MRA) based upon the components of contributory value attributable to each property. The uniform application of the County’s MRA is explained in the submitted Lancaster County 2023 Residential Valuation Methodology with a detail of the coefficients for adjustments for the Subject Property’s neighborhood valuation model which is applied to all properties.
35. The Appraiser provided a Comparable Sales Report with recently sold properties along with their PRFs, detailing their components of comparability and adjustments to the sale prices

¹⁵ *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).

¹⁶ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

¹⁷ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

based on professionally accepted mass appraisal practices to support the Subject Property's valuation.

36. The Appraiser attested that the appraisal report submitted by the Taxpayers shows correlation with the assessed value by asserting a valuation within less than 3% of the 2023 value as set by the County.
37. The Appraiser also argued that use of comparable 4 in the appraisal report would be outside the compliance date of the County for use in setting values.
38. The effective date of the appraisal report of 2/7/2023 is after the indicated January 1¹⁸ effective date of valuation, however, all but comparable 4 are compliant with the sales study period of the county and considered reliable by the Commission for measurement purposes.
39. The appraisal report places the most weight on the adjusted sales price of comparable 3 which leads to the opinion of value of \$917,000 for the Subject Property while the rest of the adjusted sales show a range from \$891,518 to \$1,000,313. This range places the 2023 assessed valuation of \$941,600 near the mid-point and shows only a 2.6% difference of opinion in the mass appraisal value of the Appraiser and the fee simple value of the appraisal report.
40. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹⁹
41. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.²⁰

¹⁸ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

¹⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

²⁰ *Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.*

42. The Taxpayer has 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 vacated and reverse.

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	\$254,300
<u>Improvements</u>	<u>\$662,700</u>
Total	\$917,000

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 6, 2024.

Signed and Sealed: August 6, 2024



Jackie S. Russell, Commissioner