

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

NEIL DANBERG
APPELLANT,

CASE NO: 23R 1027

V.

**DECISION AND ORDER
AFFIRMING 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 16-21-114-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$436,900 for tax year 2023.
3. Neil Danberg (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 \$436,900 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 August 1, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Neil Danberg 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 1.¹
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 home built in 2006 with 1,630 square feet (SF) above grade, basement area of 1,630 SF with 1,000 SF full finish, 15 plumbing fixtures, 1 fireplace, attached garage of 818 SF, quality rating of average (3), and a condition/desirability/utility rating of typical (4).
17. The Taxpayer stated that the Subject Property valuation is arbitrary and unreasonable compared to its purchase price in 2019 of \$340,000 and the fact that no changes have been made to the property.
18. The Taxpayer stated that the most comparable property on the block sits adjacent to the Subject Property at 7410 Exbury Rd and was also purchased in December 2019, for \$312,000.
19. The Taxpayer protested the 2021 valuation to the County Board and received an adjustment to the value which totaled \$346,500 and remained as such in 2022.
20. The Taxpayer stated that the property at 6131 Eureka Dr, also adjacent to the Subject Property, is now valued lower than the Subject Property after a purchase price from September 2020 of \$378,000, which was higher than the Subject Property's purchase price.
21. The Taxpayer provided property detail records for the comparable properties, printed from the County's website.

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).

22. The Taxpayer did not provide the Property Record Files (PRF) for any of the properties presented for comparison purposes. Without the details contained in the PRF, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property.⁹
23. The Taxpayer compared 7410 Exbury Rd to the Subject Property, yet it has less total living area, less total basement area, fewer plumbing fixtures, a smaller attached garage, a wood deck, and more square feet of basement finish. The Taxpayer's submitted information does not indicate the quality and condition ratings assigned to 7410 Exbury Rd.
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁰
25. The assessed value for real property may be different from year to year according to the circumstances. ¹¹For this reason, a prior year's assessment is not relevant to the subsequent year's valuation. ¹² Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹³
26. Under Neb. Rev. Stat. § 77-112, actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 28, 2024, includes the following:

***NOTE:** Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

¹⁰ Neb. Rev. Stat. § 77-201(1)-(3) (Reissue 2018).

¹¹ *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

¹² *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

¹³ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.¹⁴

27. 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 valuations¹⁵ along with utilizing professionally accepted mass appraisal techniques to set the valuation of all properties.
28. 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.
29. The Appraiser attested that ranch style homes are selling at a premium compared to other styles as are in the Subject Property's neighborhood.
30. The Taxpayer's information shows 6131 Eureka Dr is more recently built, has more total living area and more plumbing fixtures, but has a smaller basement, smaller garage, smaller roof, and less basement finish. Further, 6131 Eureka Dr is a two-story property and would not be directly comparable to the Subject Property.
31. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁶
32. "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

¹⁴ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845, 906 N.W.2d 285, 295 (2018).

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

¹⁶ See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

more like the subject, its price is brought closer to the subject's unknown value.”¹⁷

33. The Appraiser provided a Comparable Sales Report to support the Subject Property valuation with recently sold properties along with their PRFs, detailing their components of comparability and adjustments to the sale prices based on professionally accepted mass appraisal practices to set the Subject Property valuation.
34. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
35. The Taxpayer has not 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 affirmed.

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

Land	\$ 85,000
<u>Improvements</u>	<u>\$351,900</u>
Total	\$436,900
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).

¹⁷ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

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 26, 2024.

Signed and Sealed: August 26, 2024



Jackie S. Russell, Commissioner