

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

DAN & NANCY SHERMAN
APPELLANT,

CASE NO: 23R 1029

V.

DECISION AND ORDER
AFFIRMING

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

THE DECISION OF THE
LANCASTER COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Lancaster County, parcel number 10-25-330-005-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$206,000 for tax year 2023.
3. Dan & Nancy Sherman (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 \$209,400 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 March 20, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Daniel Sherman & Nancy Lebow Sherman were present at the hearing for the Taxpayers.
8. Bret Smith (the Appraiser) and Brayden Richardson 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 1.¹
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 2 ½ story residential property built in 1915 within the original platted area of Lincoln, NE. The home features 2,514 square feet above grade, 968 square feet unfinished basement area, with a quality construction rating of average (3) and conditional rating of average minus (3) as stated on the Property Record File (PRC) provided by the Appraiser.
17. The Taxpayers attested that the Subject Property would not sell for the valuation set by the County due to location and condition of property.
18. The Taxpayers stated that the Subject Property is located in a high crime rate area of Lincoln, NE.
19. The Appraiser agreed that the Subject Property is located in a high crime rate area, but that concern is addressed in the development of the land model used for this neighborhood. The land model was developed using an allocation methodology with the percentage influence being derived from new construction residential land sales, which support upwards of 22% allocation rates. The Subject Property neighborhood model is developed to be approximately 18% allocation for land values.
20. The Subject Property was originally purchased by the Taxpayers for \$149,900 in December of 2020. Prior to their purchase, the Taxpayers received a field report dated November 5, 2020, with

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).

observations of the foundation walls by a Professional Civil Engineer. The report also cited a recommendation for repair of the north end of the west foundation wall which the Taxpayers completed after January 1, 2023. The cost to cure the portion of foundational wall totaled \$6,650.

21. The Appraiser stated that the Subject Property was physically inspected in April of 2021 where a conditional adjustment was made to the property due to their findings, including the condition of major components such as the roof (approximately 23 years old per the Taxpayer), and foundation walls. As a result, the condition rating was lowered from average (4) to average minus (3) to better reflect that the property has some issues that may need attention but not total replacement.
22. The Appraiser attested that a conditional rating adjustment of the Subject Property for the 2023 valuation year would yield a contributory difference of approximately \$38,000 between an average rating (4) and an average minus rating (3), showing that the contributory value change exceeds the cost to cure the foundation walls.
23. The Appraiser stated (also as shown on the 3-page packet of information titled "1529 B Street" in bold text submitted as information from the Appraiser) that the Subject Property is the 3rd largest home within its neighborhood boundary of neighborhood "7LCN061 - Original Plat -Low", with an approximate property count of 1,267. Out of 163 other properties with comparable build type, and like quality and condition, the Subject Property has a price per square foot (PPSF) value of \$59.63. Due to the size of the property, a PPSF analysis of the sales with like condition and quality from the Subject Property neighborhood was also included. This detailed 14 sales were validated by the County and this neighborhood supports an average PPSF of \$100.65 which is an increased difference of \$41.02 PPSF from Subject Property valuation.

24. It should also be noted that the Appraiser stated that a property of this size would typically be given a higher quality rating than average (4) but opined that the Subject Property lacks certain construction aesthetics typically seen in properties of higher square footage build from the same time period within the market area. An increased quality rating would result in an increased valuation.
25. 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.
26. 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	\$ 33,000
<u>Improvements</u>	<u>\$ 176,400</u>
Total	\$209,400
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 APRIL 8, 2024.

Signed and Sealed: APRIL 8, 2024



Jackie S. Russell, Commissioner