

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

JEFFERSON CREEK
APPELLANT,

CASE NO: 23R 1043

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 16-02-213-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$880,600 for tax year 2023.
3. Jefferson Creek (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 \$880,600 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 September 9, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Todd Watson 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 2015 with 2,684 square feet (SF) above grade, basement area of 2,622 SF with 2,150 SF full finish, 21 plumbing fixtures, three fireplaces, attached garage area of 986 SF, quality rating of good (4), and condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer stated that the Subject Property is not equalized with neighboring parcels on a price per square foot (PPSF) basis. The Taxpayer alleged that because of the higher PPSF of the Subject Property, the value is arbitrary and unreasonable.
18. The Taxpayer provided an analysis of the Subject Property and an opined comparable property located at 3401 Firethorn Terrace. Both properties are located on the Subject Property's cul-de-sac which houses 20 lots. The comparable property sold on 10/21/2022.
19. The comparable property provided by the Taxpayer is a two-story, single-family home built in 2015 with 3,580 SF, basement area of 2,244 SF with 1,650 SF full finish, 21 plumbing fixtures, two fireplaces, attached garage of 853 SF, quality of good (4), and CDU of typical (4).
20. The Commission finds that the use of a two-story home as a comparable property to a one-story home, is not acceptable under professionally accepted mass appraisal methods as the

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).

homes are of two different styles, amongst other differing physical characteristics which would require adjustments to the comparable property.

21. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location. See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).
22. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁹
23. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁰ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹¹
24. “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.” Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).
25. The Taxpayer’s opinion of value was determined by a PPSF analysis, (value divided by above grade square footage), of a non-comparable property to the Subject Property. Had the properties been comparable, the analysis also ignored necessary adjustments to the sales price of the sold property to bring the property closer to the Subject Property’s features. The Taxpayer’s method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives no weight to it.

⁹ Neb. Rev. Stat. § 77-201(1)-(3) (Reissue 2018).

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

¹¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

26. 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.
27. The Appraiser provided a Comparable Sales Report to support the Subject Property valuation with recently sold properties along with their Property Record Files, detailing their components of comparability and adjustments to the sale prices based on professionally accepted mass appraisal methods.
28. 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.
29. 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 | \$218,800 |
| <u>Improvements</u> | <u>\$661,800</u> |
| Total | \$880,600 |
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 September 24, 2024.

Signed and Sealed: September 24, 2024



Jackie S. Russell, Commissioner