

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

MARGARET KLEIN
APPELLANT,

CASE NO: 23R 1048

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 17-30-110-015-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$133,200 for tax year 2023.
3. Margaret Klein (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 \$133,200 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 June 3 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Margarete E. Klein was present at the hearing for the Taxpayer.
8. Bret Smith (the 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 Taxpayer provided a list of multiple deficiencies with the Subject Property. The deficiencies include in part, no functional bathroom on the second floor, original windows that are not functional, damaged and cracked plaster on walls and ceilings throughout the house, leaks causing flooring damage in bathroom, lower floor ceilings and kitchen, unusable and unsafe fireplace, smoke-stained wall due to fireplace insert not being sealed, woodwork needs repaired and painted. Photos were provided by the Taxpayer showing many of the deficiencies.
17. The Taxpayer stated the attic floor joists are on 2x4, showing the house was not a quality build. The Taxpayer asserted the chimney in attic needs repointing as it leaks water during hard rainstorms. The Taxpayer stated the electrical panel was installed in 1970 and the circuits are 2 wire which make it impossible to change insurer because most insurance companies won't insure a home with that old of electrical systems.
18. The Taxpayer stated a home needing as many repairs as the Subject Property should not increase in value at the same rate as homes needing little to no repairs. The Taxpayer stated the pool of prospective buyers for a home like this is very small.
19. The Taxpayer provided an estimate done in June of 2023 by Crawford Plumbing Co. to replace the cast iron drains and run

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).

new PVC pipe from basement to second floor and attach with the existing cast iron pipe along with running new lines for bathtub and sink. The estimate was for \$3,891.79.

20. The Appraiser stated an inspection in 2017 was done and the Condition, Utility and Desirability (CDU) was lower to a 2 which was the lowest it could be lowered to for a house that was inhabited. With the CDU at a 2, all the deficiencies the Taxpayer mentioned are considered.
21. The Appraiser stated the entire home shows significant amount of deferred maintenance and a general lack of upkeep, which was unchanged for several years of reviews done by the Assessor's Office.
22. The Appraiser stated the Subject Property is being valued with only one working bathroom even though there are multiple bathroom fixtures in the home.
23. 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.
24. 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	\$ 40,000
<u>Improvements</u>	<u>\$ 93,200</u>
Total	\$ 133,200

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 December 17, 2024.

Signed and Sealed: December 17, 2024



James D. Kuhn, Commissioner