

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

FREDRIC VOELKER
APPELLANT,

CASE NO: 23R 1050

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 16-17-412-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$436,000 for tax year 2023.
3. Fredric Voelker (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 \$436,000 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 13, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie Russell.
7. Fredric and Catherine Rae Voelker were present at the hearing for the Taxpayer.
8. Tim Johns (Appraiser) and Priscilla Hruby 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 two-story, single family residential home built in 1992 with 2,618 square feet (SF) above grade, basement area of 1,343 SF with 1,100 SF of full finish, 18 plumbing fixtures, a quality rating of average (3), and a condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayers opined that the property value increase was unreasonable for the neighborhood due specifically to the abutting throughfare at the rear of the property, safety concerns of the neighborhood, a misclassification of the pool, and a dis-equalization with similar neighboring properties.
18. The Taxpayers provided a list of five neighboring properties for comparison indicating their parcel identification number, address, year built, and the value of each.
19. The Taxpayers attested that the comparable properties comprised of similar SF, fixture count, and amenities, but their overall valuations were between \$51,800 and \$94,700 less than the Subject Property.
20. Since the Property Detail pages are from the Lancaster County website detailing 2024 information and lacking certain appraisal criteria such as the quality and CDU of each property rather than an official Property Record File (PRF) from the County

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).

Assessor's office, it is inconclusive to compare the properties with the Subject in that manner.

21. The Appraiser submitted a document with an array of property valuations for two story homes in the Subject neighborhood that also contained additional component information. All properties submitted for comparison by the Taxpayers with the exception of 4910 Elk Ridge Rd, were included on the document, therefore, a comparison of property components was available.
22. Using generally accepted mass appraisal practices, the residential components of each property appear to place the Subject Property value higher than the similar property's valuations based on contributory cost analysis.
23. The Appraiser attested that the Subject Property land value is receiving a 10% adjustment (as indicated on page 1 of the submitted PRC for the Subject Property) due to the proximity to a major thoroughfare.
24. The Taxpayers opined that a further negative adjustment should be made to the value for safety/crime issues but did not provide additional information to quantify an adjustment.
25. The Appraiser agreed that the neighborhood is known for having those concerns but stated there is not a measurable indicator available from the market to support an additional adjustment.
26. The Appraiser stated that the Subject Property has not been physically inspected and there is a privacy fence preventing access to the back of the property during physical reviews.
27. The Appraiser reviewed components of the Subject Property with the Taxpayers at the hearing to verify the PRF data. The Appraiser stated that aerial imagery and notice of a permit, were used to determine that the property housed an in-ground swimming pool resulting in contributory value added.
28. The Appraiser attested that in-ground pools are placed on property data records and valued with the Cost Approach in conjunction with Multiple Regression Analysis utilized by the

- County and above ground pools are not valued due to their construction and ability to be easily removed from the property.
29. The Taxpayers rebutted that the pool is a “Doughboy” pool that is considered an above ground pool with similar construction and should not have the value attributed to it of that of an in-ground pool.
 30. The Taxpayers provided aerial imagery from their mobile device during the hearing for the Commission to view the pool structure.
 31. The Taxpayers attested that a concrete sidewalk surrounds the lip the pool and if the pool were to be removed from the property, dirt fill would be needed to level out the yard.
 32. After questioning and viewing pictures, the Commission agrees that the pool construction is that of an above ground pool, but it has been embedded into the land of the Subject Property and therefore, should be treated as an in-ground structure for purposes of valuation.
 33. The Appraiser stated that a revaluation was conducted to the Subject Property neighborhood for 2023. As such, the result will be varying degrees increases or decreases to each property in the market study area dependent upon the property components and comparable sales within their study period.
 34. 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 generally acceptable mass appraisal practices to set the Subject Property valuation.
 35. 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.
 36. 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	\$ 70,200
<u>Improvements</u>	<u>\$365,800</u>
Total	\$436,000

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 July 11, 2024.

Signed and Sealed: July 11, 2024



Jackie S. Russell, Commissioner