

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

RODNEY J. SCHWARTZ
APPELLANT,

CASE NO: 23R 1072

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 17-26-206-008-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$437,200 for tax year 2023.
3. Rodney J. Schwartz (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 \$437,200 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 12, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie Russell.
7. Rodney Schwartz was 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 with 2,628 square feet (SF) above grade, and basement area of 1,332 SF with 500 SF having minimal finish. There are 11 plumbing fixtures, an attached garage with 1,092 SF, a quality rating of average (3), and a condition/utility/desirability rating of average minus (3).
17. The Taxpayer opined that the Subject property has a negative influence not reflected in the valuation since the Subject's subdivision was annexed with no city services gained, however, the land valuation increased from \$80,000 to \$175,000.
18. The Taxpayer provided a spreadsheet of properties showing the 2022 valuation, the 2023 valuation, lot sizes in acres, and the assessed value of each lot per acre.
19. The Taxpayer stated that their research showed that the Assessor's office is utilizing a "site method of evaluation" for the Subject and the properties contained on the spreadsheet.
20. The Taxpayer opines that in using a site method land value, as the lot size increases, the value too should increase and has given examples of properties with larger sized lots comparable to the Subject with lower price per acre valuations.
21. The Taxpayer did not provide Property Record Files (PRF) for the properties that were included on the spreadsheet other than

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).

6105 Andrew Ct. and no other documents to quantify the additional information provided.

22. The Appraiser attested that there was no way to verify which neighborhood models the properties resided in for analysis and therefore, the Appraiser could not make comment about the information given by the Taxpayer other than the property at 6105 Andrew Ct. This comparable was previously influenced by a golf course that has now been renovated into residential assisted living parcels and other mixed commercial properties.
23. Generally accepted mass appraisal principles and practices of assessment will follow a Law of Diminishing Returns which states that as a commodity increases, at some point that commodity's utility will decrease, creating a lesser value per unit.⁹
24. The comparison of the Subject property land to other properties of similar or larger lot size not in the same neighborhood boundary as set by the Assessor's office on the PRF (Nbhd), may have other influencing factors contributing to the overall valuation of the land. Without the presence of PRFs for the presented comparable properties, verification of the land values presented is unsupported.
25. The Appraiser attested that all properties located within the Subject property subdivision have land values that are equalized at \$175,000 per parcel and are influenced by a golf course that was developed after the annexation of the Subject property subdivision.
26. The Appraiser attested that through sales analysis the exclusion of city services does not outweigh the allure of an acreage by a golf course and that the significant change in the valuation is due to the sales of lots near the golf course.
27. The Appraiser provided PRFs for three comparable properties which have sold within the sales study period of October 1, 2020,

⁹ See generally, Appraisal Institute, *The Appraisal of Real Estate* at 172-73 (15th ed. 2020).

thru September 30, 2022, along with a Comparable Sales Analysis (CSA) document.

28. The Appraiser attested that through the use of multiple regression analysis (MRA), adjustments are made to components of the comparable properties through variables and coefficients (as shown on the Lancaster County 2023 Residential Valuation Methodology on page 8) in line with generally accepted mass appraisal practices for the sales comparison approach to valuation.
29. The comparable located at 414 Anthony Lane confirms the same land value for the Subject's neighborhood, while the rest of the CSA shows that adjustments have been made to the sold property components to value the Subject property.
30. 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.
31. 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	\$175,000
<u>Improvements</u>	<u>\$262,200</u>
Total	\$437,200

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 July 3, 2024.

Signed and Sealed: July 3, 2024



Jackie S. Russell, Commissioner