

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

MARILYN J. BENNETT
APPELLANT,

CASE NO: 23R 1107

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 09-25-203-025-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$659,800 for tax year 2023.
3. Marilyn J. Bennett (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 \$659,800 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 August 2, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Marilyn J. Bennett, Blake Collingsworth, and Carla Waldbaum were 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 residential home built in 2000, with 2,315 square feet (SF) above grade, basement area of 2,315 SF with 2,000 SF full finish, 16 plumbing fixtures, one fireplace, attached garage of 552 SF, quality rating of good (4), and condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer representatives were the owner of the property, the original builder, and a local real estate agent.
18. The Taxpayers stated that the Subject property valuation is arbitrary or unreasonable due to the condition of the property.
19. The Taxpayers stated there are deferred maintenance issues largely associated with the Corian countertop in the kitchen, the kitchen cabinets, and the driveway. The Taxpayers opined the remainder of the property is "dated".
20. The Appraiser stated the age of the Subject property and the current CDU rating account for the types of issues that were described by the Taxpayers and does not justify a downward adjustment in the CDU rating.
21. The Taxpayers stated that the comparable properties used by the Appraiser are newer, updated properties and therefore, non-indicative of the Subject property's value.
22. The Taxpayers submitted a Market Value Analysis for the Subject property. The cover page discloses that this document is

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).

not an appraisal and is not governed by the Real Property Appraiser Act. Furthermore, Market Value Analyses are not required to adhere to Uniform Standards of Professional Appraisal Practice and therefore, the Commission gives it no weight.

23. The county assessor shall have general supervision over and direction of the assessment of all property in his or her county.⁹
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁰
25. Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.¹¹
26. Appraisal, reappraisal, and mass appraisal are interchangeable terms for property taxation purposes. All appraisals must meet the standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation in the *Uniform Standards of Professional Appraisal Practice*, effective as currently updated, including Standard 6, Mass Appraisal and Reporting in conjunction with existing “Statements on Appraisal Standards” and “Advisory Opinions”.¹²
27. The Appraiser submitted a Comparable Sales Report along with the corresponding Property Record Files and the Int High Model Valuation Methodology documents, to show that generally accepted mass appraisal practices have been applied to adjust comparable properties based on the data obtained by their office, to bring the value of the Subject property closer to its unknown value.

⁹ Neb. Rev. Stat. § 77-1311 (Reissue 2018).

¹⁰ Neb. Rev. Stat. § 77-201(1)-(3) (Reissue 2018).

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

¹² 350 Neb. Admin. Code, ch. 50 § 001.02 (07/05/2017).

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	\$132,600
<u>Improvements</u>	<u>\$527,200</u>
Total	\$659,800

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 16, 2024.

Signed and Sealed: September 16, 2024



Jackie S. Russell, Commissioner