

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

GAYLE KRUEGER
APPELLANT,

CASE NO: 23R 1335

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 16-20-103-002-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$411,900 for tax year 2023.
3. Gayle Krueger (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 \$411,900 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. Gayle E. Krueger was present at the hearing for the Taxpayer.
8. Tim Johns (Appraiser) and Priscilla Hrubby 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, residential home with 2,267 square feet (SF) above grade, 1,218 SF basement area with 1,100 SF full finish. There are 18 plumbing fixtures throughout the property, a two-car built-in garage with 511 SF, one single story fireplace, and a wood deck of 248 SF. The quality rating is average (3) and the condition/utility/desirability rating (CDU) is typical (4).
17. The Taxpayer stated concern with the revaluation of property each year as opposed to a previous method of every three years.
18. The Appraiser stated that the need for revaluation is based upon the market analysis and the level of value within the county being within the acceptable range of 92-100% for the State of Nebraska.
19. The Taxpayer also stated concerns with the constitutionality of the tax structure in Nebraska.
20. The Taxpayer alleges a ruling of the Supreme Court directs "taxes are to be collected on basis of census." However, the Taxpayer did not provide a copy of the decision, nor a citation to the decision. Accordingly, the Commission cannot examine the decision and determine its applicability to this appeal.
21. The Taxpayer alleges this language requires all homes to be taxed at the same rate based on "occupancy (census) and not

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).

enumeration.” The Taxpayer also asserts an “appraisal is an arbitrary basis of valuation and fluctuates based on markets. This can never give an accurate picture of a home’s true value.

22. The language cited by the Taxpayer derives from the U.S. Constitution, at Article I, § 9, Cl 4. This language prohibits the Federal Government from instituting a direct tax “unless in Proportion to the Census or Enumeration herein before directed to be taken.” This restriction is only applicable to the Federal Government and does not apply to the State of Nebraska.
23. The Nebraska Constitution expressly provides that taxes “shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Constitution.”⁹
24. Nebraska law expressly provides that actual value is based upon the market value of the property:

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. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the

⁹ Neb. Const. Art. VIII, § 1.

physical characteristics of the real property and an identification of the property rights being valued.¹⁰

25. The Taxpayer has not provided an alternative opinion of value supported by the evidence.
26. 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.
27. 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 vacated/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	\$ 97,500
<u>Improvements</u>	<u>\$314,400</u>
Total	\$411,900
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.

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

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