

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

DONNA J EPLEY
APPELLANT,

CASE NO: 23R 1355

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 17-34-140-002-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$576,600 for tax year 2023.
3. Donna J Epley (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 \$576,600 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 May 30, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Donna J. Epley was present at the hearing for the Taxpayer.
8. Tim Johns (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 stated the Subject Property increased in assessed value 51% from the 2022 valuation when neighboring properties increased 18% to 22%. The Taxpayer stated a 22% increase would have been more reasonable.
17. The Taxpayer stated the Subject Property was not compared to any of the homes sold in her neighborhood. The Taxpayer stated the county compared the Subject Property to homes that were newer with larger lots and not in the neighborhood. The Taxpayer stated a home similar to the Subject Property sold in May of 2023 for \$285,328 yet its assessment is only \$221,000.
18. The Taxpayer did not provide any Property Record Files (PRF) of any comparable homes. The Commission is unable to analyze the Taxpayers comparable to determine if it is truly comparable and what, if any, adjustment to valuation could be determined.
19. The Appraiser stated the Subject Property has a large amount of square footage for a home of its age. Due to size and other factors, the Subject Property is of Good quality whereas other homes in the neighborhood are not similar to the Subject Property.
20. The Appraiser stated the Taxpayers comparable home that sold in May of 2023 may have needed a lot of remodeling resulting in

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).

the lower sale price. Neither party provided a PRF for the home that sold in May of 2023.

21. A taxpayer must present evidence that establishes the actual value of the property and evidence that the property was not fairly and proportionately assessed with other property in the county. Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.
22. While testimony is a kind of evidence, relying upon “testimony with little or no supporting documentary evidence does so at the risk of non-persuasion.”.
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	\$ 80,500
<u>Improvements</u>	<u>\$496,100</u>
Total	\$576,600

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 November 19, 2024.

Signed and Sealed: November 19, 2024



James D. Kuhn, Commissioner