

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

DURYEA, POLLY PORR
TRUST
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NO: 23R 1492

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Lancaster County, parcel number 16-06-404-005-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$482,600 for tax year 2023.
3. Duryea, Polly Porr Trust (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 \$482,600 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 September 9, 2024 at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Joe Duryea was present at the hearing for the Taxpayer.
8. Bret Smith (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 home built in 1972 with 2,511 square feet (SF) above grade, basement area of 2,071 SF with 1,500 SF full finish, 16 plumbing fixtures, one fireplace, attached garage of 576 SF, quality rating of good (4), and a condition/desirability/utility (CDU) rating of typical (4).
17. The Taxpayer stated that the property valuation is arbitrary or unreasonable due to the location on the mouth of a cul-de-sac that abuts a busy arterial street.
18. The Taxpayer provided aerial imagery of traffic flow around the Subject Property for the Commission to analyze.
19. The Appraiser stated that since the property abuts a major arterial, there is a 10% negative land adjustment applied to the value as shown on page one of the Subject Property's Property Record File (PRF) provided by the Appraiser.
20. The Taxpayer has not presented information to demonstrate that the 10% negative economic adjustment to the location of the property was arbitrary or unreasonable.
21. The Taxpayer stated that the comparable properties used by the Comparable Sales Report submitted by the Appraiser, do not take into account traffic flow issues of the Subject Property, and opined the comparable sales' neighborhoods are more desirable.

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).

22. The Taxpayer did not present any properties or Property Record Files for the Commission to analyze as substitutions for the properties included on the Comparable Sales Report.
23. The Appraiser stated there was a revaluation conducted to the Subject Property neighborhood for 2023. As such, the result will be varying degrees of percentage increases (or decreases) to each property in the market study area dependent upon the property components and comparable sales within their study period.
24. The Appraiser stated that a review of the Subject Property prior to the hearing was conducted and data for the property was corrected. The corrections, however, did not lead to a new opinion of value for 2023.
25. The Taxpayer provided a “2024 Revised Comps PSF Analysis” to demonstrate that the price per square foot (PPSF) of the Subject Property exceeds the PPSF of the comparable properties shown on the Comparable Sales Report.
26. The Taxpayer did not make any adjustments to the PPSF of the comparable property’s data to bring the property closer to that of the Subject Property’s data prior to calculating a PPSF.
27. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.” Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).
28. If the comparable property is inferior in some respect, the sale price is adjusted upward, just as if it is superior, it will be adjusted downward.⁹
29. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁰ The methods

⁹ *Property Assessment Valuation, Third Edition*, p. 105, International Association of Assessing Officers, (2010).

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

expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹¹

30. The Taxpayer's opinion of value was determined by dividing the 2023 valuation by the total square footage above grade for each comparable and requesting a value slightly higher than the outcome of each. The Taxpayer's method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute competent evidence and gives little weight to it.
31. 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.
32. 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	\$ 93,200
<u>Improvements</u>	<u>\$389,400</u>
Total	\$482,600

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster

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

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 24, 2024.

Signed and Sealed: September 24, 2024



Jackie S. Russell, Commissioner