

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

DANNY D. SCHAFER
APPELLANT,

CASE NO: 23R 1592

V.

DECISION AND ORDER
REVERSING 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 17-14-200-011-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$650,300 for tax year 2023.
3. Danny D. Schafer (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 \$650,300 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 July 11, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Danny and Kendra Schafer 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 1995 with 2,166 square feet (SF) above grade, basement area of 2,790 SF with 1,500 (SF) of full finish, 13 plumbing fixtures, an attached garage of 624 SF, quality rating of good (4), and a condition/desirability/utility (CDU) rating of typical (4). The lot size is 5.03 acres with water view access of an approximate ½ acre pond on the lot that is owned and maintained by the Taxpayers.
17. The Taxpayers attested that the Subject Property land value is excessive for the neighborhood.
18. The Taxpayers attested that they maintain and use the pond for personal use.
19. The Taxpayers submitted a compiled spreadsheet of assessed land values from properties along 98th Street, Leighton, and Adams. The spreadsheet indicated the number of acres per lot, whether the lot had pond access, the assessed values of the land from 2022, 2023, and 2024, the percent change between years, and the price per acre of each included year.
20. It is inconclusive whether or not all the data provided on the spreadsheet was accurate or comparable to the Subject Property land issue as the Taxpayers did not submit Property Record

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).

Files (PRF) to verify the information compiled on the spreadsheet.⁹

21. The Appraiser stated that a reappraisal of the Subject Property neighborhood was conducted for 2023.
22. The Appraiser attested that the Subject Property was previously classified as having a “waterfront” property as opposed to a “water view” property. A waterfront property would be subjected to a 25% influence factor on the site acre land value, as derived from market analysis by the Assessor’s office, and would include larger bodies of water than that located on the Subject Property. A water view property would be subjected to a 10% influence factor on the site acre land value, also derived from market analysis.
23. The Appraiser provided a Comparable Sales Report to support the Subject Property valuation with recently sold properties along with their PRFs, detailing their components of comparability and adjustments to the sale prices based on generally acceptable mass appraisal practices to set the Subject Property valuation in 2023.
24. The Appraiser attested to a new opinion of land value of \$189,060 after reclassification to water view influence.
25. Competent evidence has been produced that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
26. Clear and convincing evidence has been adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated and reversed.

⁹ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on June 6, 2024, includes the following:

NOTE: *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$189,060
<u>Improvements</u>	<u>\$432,440</u>
Total	\$621,500

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 25, 2024.

Signed and Sealed: July 25, 2024



Jackie S. Russell, Commissioner