

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

JOFER REVOCABLE LIVING  
TRUST  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NO: 24A 0844

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

**I. BACKGROUND**

1. The Subject Property is an improved agriculture parcel in Lancaster County, parcel number 04-20-300-015-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$513,800 for tax year 2024.
3. Jofer Revocable Living 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 \$513,800 for tax year 2024.
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 December 9, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Fred and Joyce Nass were present at the hearing for the Taxpayer.

8. Sue Bartek (Appraiser) and Christy Light 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a one-story, single-family home built in 1999 with 2,324 square feet (SF) above grade, walkout basement area of 1,716 SF with no finish, nine plumbing fixtures, attached garage with 506 SF, quality rating of average (3) and a condition/desirability/utility (CDU) rating of average minus (3). The home is located in rural Lancaster County and is zoned for agricultural use with a home site. The parcel contains 22.21 acres.
17. The Taxpayer stated the valuation process of the Subject Property is not uniform and proportionate since other properties are receiving an alleged tax discount for basement finish while the Subject Property does not receive a tax discount.
18. The Taxpayer alleged that basement area finish is receiving a discounted coefficient for value and in turn a discounted tax responsibility.
19. The Taxpayer stated that the Subject Property data on the Property Record File (PRF) submitted by the Appraiser was correct.

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<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

20. The Appraiser stated that the valuation of the Subject Property was reached through use of a sales comparison approach with multiple regression analysis (MRA), developed from market data from the sales file.
21. The “sales file” is “a data base of sales of real property, including arm's length transactions, in the State of Nebraska” and is developed and maintained by the state Property Tax Administrator. All sales in the sales file are deemed to be “arm’s length” transactions unless determined otherwise.<sup>9</sup> Arm’s length transactions are determined by the County Assessor.
22. The Appraiser attested that in the market study, main floor living area will command a higher price than basement finish and therefore, valuations will reflect a different contributory value which gives basement finish less value than main floor living area.
23. The Subject Property has no basement finish and therefore, no contributory value for basement finish.
24. 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.<sup>10</sup>
25. The Taxpayer provided a spreadsheet (2019 Model Coefficients) of data supplied to them by the Assessor’s office to show the differing models used in determining value across the county. The spreadsheet does not indicate that the coefficients were not derived using generally accepted mass appraisal methods, nor that the value of the Subject Property is arbitrary or unreasonable.
26. The Taxpayer provided a spreadsheet of properties located near the Subject Property with varying columns of data. The spreadsheet does not include all components of contributory

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<sup>9</sup> *County of Douglas v. Nebraska Tax Equal. & Rev. Comm’n*, 296 Neb. 501, 511-12, 894 N.W.2d 308, 316 (2017) (citations omitted).

<sup>10</sup> *Future Motels, Inc. v. Custer Cty. Bd. of Equal.*, 252 Neb. 565, 570, 563 N.W.2d 785, 789 (1997); *Beynon v. Board of Equalization*, 213 Neb. 488, 329 N.W.2d 857 (1983).

value data, nor did the Taxpayer provide property record files for the Commission to review to determine whether the properties submitted were comparable to the Subject Property.<sup>11</sup> Therefore, the Commission gives the information supplied no weight.

27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (style, size, finish, condition, etc.), and location.
28. The Appraiser attested that the Subject Property's contributory values were determined by the model of the Subject Property's neighborhood (3500S – Rural), which is applied to all residential dwellings assigned to that neighborhood. Contributory values are determined on square foot or unit count basis for each property and uniformly applied according to the quality and CDU ratings through use of the MRA model.
29. 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.
30. 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:

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<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 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.*

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2024 is affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	\$184,000
<u>Improvements</u>	<u>\$329,800</u>
Total	\$513,800

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 2024.
7. This Decision and Order is effective on January 8, 2025.

Signed and Sealed: January 8, 2025




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Jackie S. Russell, Commissioner