

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

THOMAS E BASTIEN  
APPELLANT,

CASE NO: 24R 0519

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 16-09-437-004-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$971,800 for tax year 2024.
3. Thomas E Bastien (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 \$971,800 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 January 15, 2025, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Thomas Bastian was 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.<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>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</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).

<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).

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 2001 with 2,700 square feet (SF) above grade, basement area of 2,686 SF with 2,200 SF full finish, 19 plumbing fixtures, two single story fireplaces, attached garage area of 676 SF, quality rating of good (4), and condition/desirability/utility (CDU) rating of typical (4). The property also features a 1,250 SF swimming pool.
17. The Taxpayer argued that the Subject Property valuation was arbitrary and unreasonable based on the submitted appraisal report performed by Troy Topolski (hereinafter referred to as the Taxpayer's Appraisal).
18. The Taxpayer's Appraisal was written with an effective date of October 28, 2024 which is after the effective date of January 1, 2024 required by statute for all real property.<sup>9</sup> However, the Taxpayer's Appraisal indicated on the Additional Comparable Sales page that comparable sales #4-6 were added to the Appraisal "to support the opinion of market value on the retrospective date of 01/01/2024" and shows an adjusted sales price range of \$876,730 - \$894,900. This brackets the overall indicated value of the Subject Property of the Appraisal of \$890,000.

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<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).

<sup>9</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

19. The Appraiser argued that the property information contained within the Taxpayer's Appraisal for the comparable properties did not match that of the assessment records. The Taxpayer's Appraisal indicates that the data was obtained from the county assessor, however, the Property Record Files (PRF) which house the data of each comparable were not presented to the Commission to analyze the claim of mismatched information.
20. The Taxpayer's Appraisal indicates on the Certifications page that the appraiser has conformed to Uniform Standards of Professional Appraisal Practice when compiling and completing the Appraisal.
21. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>10</sup>
22. The Commission finds and determines that the Taxpayer's Appraisal constitutes competent evidence concerning the value of the Subject Property and that the presumption in favor of the County Board's determination is rebutted.<sup>11</sup>
23. The Taxpayer has 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 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.

#### **IV. ORDER**

#### **IT IS ORDERED THAT:**

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<sup>10</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>11</sup> *Id.*

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

Total	\$890,000
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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 February 7, 2025.

Signed and Sealed: February 7, 2025



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Jackie S. Russell, Commissioner