

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

TODD A LEWIS TRUST  
APPELLANT,

CASE NO: 24R 0750

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 07-01-101-001-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$359,800 for tax year 2024.
3. Todd A Lewis 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 \$359,800 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 14, 2025, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Todd Lewis was present at the hearing for the Taxpayer.
8. Sue Bartek (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 3.16 total acres improved with a one-story, single-family home. The home was built in 1978 with 1,800 square feet (SF) above grade, five plumbing fixtures, basement area of 1,800 SF with no finish, an attached garage with 1,740 SF, an overall quality rating of fair (2), and condition/desirability/utility (CDU) rating of typical (4). The Property Record File (PRF) submitted by the Appraiser also indicates that the Subject Property underwent a full remodel of the above grade area in 2008 but kept the original foundation. The Subject Property is affixed to 3.16 total acres.
17. The Taxpayer stated that the Subject Property is affected by a floodplain which encompasses approximately 2.15 acres of land and includes a portion of the east side of the property's improvements. A GIS flood zone map was submitted by the Appraiser for the Commission to analyze showing how the Subject Property is intersected by the floodway.
18. The Taxpayer stated that the County Assessor is only allowing 1 acre of land value to be adjusted for floodplain effects. The Taxpayer believes this decision, along with the limitations of property development within a floodplain, make the Subject Property's valuation arbitrary or unreasonable.

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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).

19. The Taxpayer stated that properties located within a floodplain are subjected to higher insurance rates and more stringent development requirements or restrictions in development. The Taxpayer did not provide any evidence that properties located within the floodplain are yielding a difference in sale amount or value.
20. The Appraiser stated there have been no measurable differences between properties sold within the floodplain, to compare with properties sold outside the floodplain.
21. The Appraiser stated that, in the absence of measurable data, only the first acre of an improved parcel is reduced by 10% as an adjustment for floodplain issues. Therefore, the other approximate 1.15 acres affected by the floodplain do not have a reduction.
22. No evidence was provided to the Commission that the County is not uniformly enforcing its stated policy of applying an adjustment factor to only the first acre of floodplain land or that the 10% adjustment is arbitrary or unreasonable for floodplain effects.
23. The Appraiser attested that since the Subject Property improvements are affected by the floodplain, the quality rating was adjusted to fair (2), which would otherwise be average (3) for this type of property.
24. The Taxpayer did not provided information to show that the quality rating of fair for the Subject Property was arbitrary or unreasonable.
25. 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.
26. 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 2024 is affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	\$112,000
<u>Improvements</u>	<u>\$247,800</u>
Total	\$359,800

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 February 10, 2025.

Signed and Sealed: February 10, 2025



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Jackie S. Russell, Commissioner