

Agenda Item # 29a
Date 1/13/21

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gallery 23 East LLC,
Appellant,

Case No. 20R 0151

v.

NOTICE OF APPEAL

Dodge County Board of Equalization,
Appellee.

TO THE CHAIR OF THE DODGE COUNTY BOARD OF EQUALIZATION IN CARE OF FRED MYTTY, DODGE COUNTY CLERK:

An appeal by Gallery 23 East LLC (a copy of which is attached) has been filed with the Nebraska Tax Equalization and Review Commission against the Dodge County Board of Equalization.

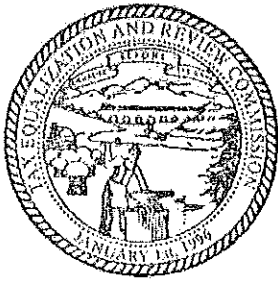
You are not required to respond to this notice.

SIGNED AND SEALED: December 30, 2020.

Robert W. Hotz

Robert W. Hotz, Chairman
Tax Equalization and Review Commission

Seal



RECEIVED
2021 JAN -4
2020 DEC 30 PM 2:22
DODGE COUNTY, NEBRASKA
FRED MYTTY, COUNTY CLERK


APPEAL TO THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

READ ALL INSTRUCTIONS CAREFULLY BEFORE FILING AN APPEAL. ADDITIONAL INSTRUCTIONS ARE LOCATED ON THE SECOND PAGE OF THIS FORM.

- For *each* decision, action, order, determination, parcel, or personal property list you are appealing, you **must** submit:
 1. A completed appeal form;
 2. A copy of the decision, action, order, or determination appealed; and
 3. The required filing fee.
- The deadline for filing an appeal or petition varies depending upon the type of appeal or petition being filed. See Page 2 of this form for more details.

Valuation Appeals & Petitions:		Contact Information for Person Signing this Appeal Form:		
<u>TAXABLE VALUE</u>	<u>FILING FEE</u>	Vanessa A. Silke	(402) 636-8266	
\$1 to \$249,999	\$40	First Name MI Last	Daytime Telephone Number	
\$250,000 to \$499,999	\$50	Baird Holm LLP, 1700 Farnam St., Ste. 1500		(402) 344-0588
\$500,000 to \$999,999	\$60	Mailing Address		Fax Number
\$1,000,000 +	\$85	Omaha	Nebraska	68102
All Other Appeals & Petitions: \$40		City	State	Zip
I am appealing from a decision of:			Legal Description and Parcel Number:	
<input checked="" type="checkbox"/> The <u>Dodge</u> County Board of Equalization.			Parcel #: 270140421	
<input type="checkbox"/> Other: _____			Legal: GALLERY 23 EAST ADDITION	
<input type="checkbox"/> I have other/unresolved appeals waiting for hearings.			REPLAT 2 LOT 4 BLK 5 .07A 17 17 9	
I am signing this appeal as:				
<input type="checkbox"/> The owner of the described property. <input type="checkbox"/> A legally designated trustee of the _____ trust.				
<input type="checkbox"/> An officer, director, full-time employee, LLC member, etc., of _____				
<input checked="" type="checkbox"/> Legal Counsel for <u>Gallery 23 East, LLC</u> . <input type="checkbox"/> Other: _____				
CAUTION: This appeal must be signed by a property owner or other person authorized by Title 442 Neb. Admin. Code.				
Reason for Appeal (Attach additional pages if needed): Please see attached Exhibit A.				

Under penalties of law, I declare that the information stated on this appeal form is true and correct to the best of my knowledge and belief.

Sign here:  Vanessa A. Silke 08/21/2020
Signature Print Name Date

Filing Checklist: Appeal Form Decision Filing Fee Signed

<p>This space for office use only.</p> <p>Appeal #: <u>20R 0151</u></p> <p>Filing Fee: <u>\$ 40.-</u></p> <p>Check No: <u>303018</u></p> <p>Verified: <u>R7D</u></p>	CH 303018... \$6,200.-	<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> <p style="font-size: 2em; margin: 0;">RECEIVED</p> <p style="font-size: 1.5em; margin: 5px 0;">AUG 21 2020</p> <p style="font-size: 0.8em; margin: 0;">TAX EQUALIZATION AND REVIEW COMMISSION</p> </div> <p style="text-align: right; margin-top: 10px;">Received</p>
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**ACTION TAKEN BY THE DODGE COUNTY BOARD OF
EQUALIZATION
ON THE 2020 PROPERTY VALUATION OF
PROTEST #495 (attached)
PARCEL #270140421**

NAME & MAILING ADDRESS OF PERSON FILING PROTEST

Vanessa A. Silke
1700 Farnam St., Suite 1500
Omaha, NE 68102-2068

RECOMMENDATION OF THE REFEREE 23500 (see attached referee's report)

**RECOMMENDATION OF THE COUNTY ASSESSOR FOR DODGE COUNTY - \$23,500.00
(assessor's report may be attached)**

COUNTY BOARD'S DETERMINATION FOR ASSESSMENT YEAR 2020	
ACTION TAKEN - Adjust land value.	
Form 191 for vacant lot discount not completed for 2020. Based on 7/2019 sale for \$23,500.	
TOTAL	\$23,500.00

The assessor has certified to the county board of equalization that a copy of that portion of the property record file which substantiates the calculation of the protested value is maintained in their office in electronic or paper form. If dissatisfied with the board's decision, this report and the property record file may be used to complete an appeal to the Tax Equalization and Review Commission.



Signature of County Board Chairman

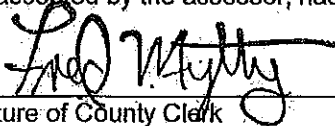
July 31, 2020

Date

Date Protest was Heard by Referee	Date of Decision	Date Notice of Decision Mailed to Protester
waived	July 20, 2020	July 31, 2020

COUNTY CLERK CERTIFICATION

The undersigned certifies that a copy of this protest and report of the action of the county board of equalization, which has been accepted by the assessor, has been mailed to the protester at the above-shown address on July 31, 2020.



Signature of County Clerk

This report of the Board's decision is also available at the county clerk's office. A copy of the report may be used to complete an appeal to the Tax Equalization & Review Commission.

COUNTY BOARD OF EQUALIZATION – original

ASSESSOR – Canary Copy

TAXPAYER – Pink Copy

Exhibit A to 2020 Nebraska TERC Appeal Form

495

Parcel Number: 270140421
Property Owner: Gallery 23 East, LLC
Filing Date: 8/21/2020

This narrative provides the reasons for Gallery 23 East, LLC's ("Taxpayer") appeal of the determination of the Dodge County Board of Equalization ("Board") to the Nebraska Tax Equalization and Review Commission ("TERC") and requested reduction in the taxable valuation for the "Property," which term means the Parcel Number set forth above. Following Taxpayer's timely protest of the Dodge County Assessor's ("Assessor") \$30,000.00 land valuation of the Property, the Board adjusted the land valuation to \$23,500.00.¹ Taxpayer requests that TERC convene an evidentiary hearing and issue an order reducing the Property's land valuation to \$14,800.00 based upon, but not limited to the issues described below.²

The Assessor's and Board's valuation failed to comply with Section 77-112, and Title 350 of the Nebraska Administrative Code's rules regarding valuation.³ As a point of reference, in 2019, the Assessor appraised the entirety of property owned by the Taxpayer within Tax District 497 and Subdivision 91452 Gallery 23 East Addition, Fremont, including the Property, and then divided that amount pro-rata by acreage among the parcels owned by the Taxpayer. In contrast, for 2020, the Dodge County Property Record Card ("Record") does not indicate which, if any, recognized mass appraisal method was utilized to establish the market value of the Property. The lack of a recognized method of valuation is illustrated by the land valuation of \$30,000.00 for 2020 for each of the parcels noted on the "Addendum" hereto, regardless of size, buildable square feet, zoning, proximity to amenities, or whether the Property will be developed as a freestanding single family home, or as a townhome, or prior valuations, which ranged from \$500.00 to far less than \$30,000.00. This indicates the Assessor's valuation of the Property is arbitrary and not indicative of the Property's actual value and/or that the valuations are not being applied uniformly pursuant to the Nebraska Constitution.⁴

The arbitrary nature of the land valuation is further exacerbated by the undeveloped condition of the Property. Since the formation of SID No. 8, Taxpayer has only sold 14 residential lots located within Tax District 497 and Subdivision 91452 Gallery 23 East Addition, Fremont.⁵ Moreover, as of December 31, 2019, the Property remained vacant. The Property and parcels identified on the Addendum, all of which are located within Tax District 497 and Subdivision 91452 Gallery 23 East Addition, Fremont, and all of which are owned by Taxpayer, are held for sale or resale. The statutory measure of actual value is not what an individual buyer may be willing to pay for the Property, but its market value in the ordinary course of trade.⁶ The income approach to valuation

¹ See attached Action Report from the Dodge County Board of Equalization.

² Items set out by statute as examples to be used in determining value of property subject to taxation are not the only factors which enter into the valuation of property for taxation. *Gradoville v. Board of Equalization*, 207 Neb. 615, 301 N.W.2d 62 (1981).

³ All section references are to the Revised Statutes of Nebraska unless otherwise noted.

⁴ A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb. 810, 606 N.W.2d 736 (2000).

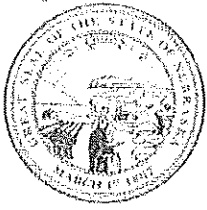
⁵ See 2019 sales of parcel numbers 270140342, 270140343, 270140344, 270140348, 270140350, 270140351, 270140352, 270140353, 270140354, 270140355, 270140356, 270140357, 270140393.

⁶ Depreciation due to external factors may be considered in valuation. *Livingston v. Jefferson County Bd. of Equalization*, 10 Neb. App. 934, 640 N.W.2d 426 (2002); Section 77-112.

would have provided an actual valuation of the Property based upon recognized appraisal methods. The Board's decision ("Action") did not account for the income approach provided under Section 77-112, and the Board's failure to do so is unreasonable and arbitrary, leading to a valuation that is grossly excessive.

At a hearing before TERC, the Taxpayer will offer extensive evidence of external, uncontrollable, unforeseeable circumstances which have altered the ordinary course of trade. Accordingly, the Taxpayer seeks an order from TERC reducing the valuation of the Property to \$14,800.00.

The Taxpayer remains willing to work cooperatively with TERC and Dodge County to resolve this appeal. Please contact us with any questions you may have prior to the hearing on this appeal.



Nebraska Tax Equalization and Review Commission

PO Box 95108 • Lincoln NE 68509-5108 • (402) 471-2842 • FAX (402) 471-7720

December 30, 2020

Vanessa A. Silke
Baird Holm LLP
1700 Farnam Street, Suite 1500
Omaha, NE 68102

RE: *Gallery 23 East LLC, Appellant, v. Dodge County Board of Equalization, Appellee, Case No. 20R 0151.*

The Commission has received the referenced appeal. A Notice of Appeal has been mailed to the Dodge County Board of Equalization and any other listed appellees. A copy of the Notice of Appeal is enclosed for your records.

Sincerely,

A handwritten signature in black ink that reads "Robert W. Hotz". The signature is written in a cursive style with a prominent "H" and "T".

Robert W. Hotz
Chairman