

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Gallery 23 East LLC,  
Appellant,

Case No. 20R 0228

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.

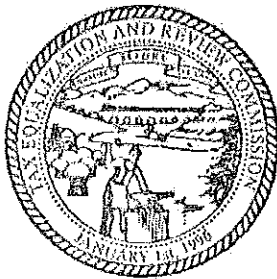
You are not required to respond to this notice.

SIGNED AND SEALED: December 30, 2020.

*Robert W. Hotz*

Seal

Robert W. Hotz, Chairman  
Tax Equalization and Review Commission



RECEIVED  
DODGE COUNTY NEBRASKA  
FRED MYTTY, COUNTY CLERK  
DEC 30 4 09 PM '20


## 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.

<b>Valuation Appeals &amp; Petitions:</b>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black;"><u>TAXABLE VALUE</u></td> <td style="border-bottom: 1px solid black;"><u>FILING FEE</u></td> </tr> <tr> <td>\$1 to \$249,999</td> <td>\$40</td> </tr> <tr> <td>\$250,000 to \$499,999</td> <td>\$50</td> </tr> <tr> <td>\$500,000 to \$999,999</td> <td>\$60</td> </tr> <tr> <td>\$1,000,000 +</td> <td>\$85</td> </tr> </table> <p><b>All Other Appeals &amp; Petitions: \$40</b></p>	<u>TAXABLE VALUE</u>	<u>FILING FEE</u>	\$1 to \$249,999	\$40	\$250,000 to \$499,999	\$50	\$500,000 to \$999,999	\$60	\$1,000,000 +	\$85	<b>Contact Information for Person Signing this Appeal Form:</b>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Vanessa A. Silke</td> <td style="width: 20%;">(402) 636-8266</td> </tr> <tr> <td>First Name MI Last</td> <td>Daytime Telephone Number</td> </tr> <tr> <td>Baird Holm LLP, 1700 Farnam St., Ste. 1500</td> <td>(402) 344-0588</td> </tr> <tr> <td>Mailing Address</td> <td>Fax Number</td> </tr> <tr> <td>Omaha Nebraska</td> <td>68102</td> </tr> <tr> <td>City State</td> <td>Zip</td> </tr> </table>	Vanessa A. Silke	(402) 636-8266	First Name MI Last	Daytime Telephone Number	Baird Holm LLP, 1700 Farnam St., Ste. 1500	(402) 344-0588	Mailing Address	Fax Number	Omaha Nebraska	68102	City State	Zip
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<b>I am appealing from a decision of:</b> <input checked="" type="checkbox"/> The Dodge County Board of Equalization. <input type="checkbox"/> Other: _____  <input type="checkbox"/> I have other/unresolved appeals waiting for hearings.	<b>Legal Description and Parcel Number:</b> Parcel #: 270140898  Legal: GALLERY 23 EAST ADDITION  REPLAT 2 LOT 18 BLK 6. 28A 17 17 9																						
<b>I am signing this appeal as:</b> <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 Gallery 23 East, LLC <input type="checkbox"/> Other: _____  <b>CAUTION:</b> This appeal must be signed by a property owner or other person authorized by Title 442 Neb. Admin. Code.  <b>Reason for Appeal</b> (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><b>This space for office use only.</b></p> <p>Appeal #: <u>20R 0228</u></p> <p>Filing Fee: <u>\$ 40.-</u></p> <p>Check No: <u>303018</u></p> <p>Verified: <u>R7D</u></p>	<p>CK# 303018 \$ 6800.-</p>	<div style="border: 2px solid black; padding: 5px; margin: 0 auto; width: 80%;"> <p style="font-size: 2em; margin: 0;">RECEIVED</p> <p style="font-size: 1.5em; margin: 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 #567 (attached)  
PARCEL #270140898**

**NAME & MAILING ADDRESS OF PERSON FILING PROTEST**

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

**RECOMMENDATION OF THE REFEREE 30000 (see attached referee's report)**

**RECOMMENDATION OF THE COUNTY ASSESSOR FOR DODGE COUNTY - \$30,000.00  
(assessor's report may be attached)**

**COUNTY BOARD'S DETERMINATION FOR ASSESSMENT YEAR 2020**

**ACTION TAKEN - No Change.**

Per assessed value, Form 191 for vacant lot discount not completed for 2020. Parcels for sale on MLS in 2019: Standard Lots @ \$51,990; Premium Lots @ \$63,990; Lake Lots @ \$77,990.

**TOTAL**

**\$30,000.00**

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

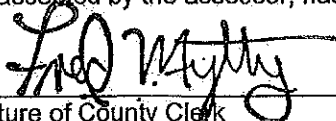
July 31, 2020

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

PROTEST # 507

Exhibit A to 2020 Nebraska TERC Appeal Form

Parcel Number: 270140898  
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 took no action and kept the land valuation at \$30,000.00.<sup>1</sup> Taxpayer requests that the TERC convene an evidentiary hearing and issue an order reducing the Property's land valuation to \$26,196.00 based upon, but not limited to the issues described below.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> The income approach to valuation

<sup>1</sup> See attached Action Report from the Dodge County Board of Equalization.

<sup>2</sup> 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).

<sup>3</sup> All section references are to the Revised Statutes of Nebraska unless otherwise noted.

<sup>4</sup> 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).

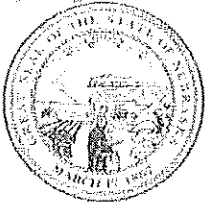
<sup>5</sup> See 2019 sales of parcel numbers 270140342, 270140343, 270140344, 270140348, 270140350, 270140351, 270140352, 270140353, 270140354, 270140355, 270140356, 270140357, 270140393.

<sup>6</sup> 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 \$26,196.00.

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 0228.*

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, slightly slanted style.

Robert W. Hotz  
Chairman