

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

WELTON REAL ESTATE,
LLC.
APPELLANT,

V.

ADAMS COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NO: 22C 0281

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

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Adams County, parcel number 01006031.
2. The Adams County Assessor (County Assessor) assessed the Subject Property at \$575,332 for tax year 2022.
3. Welton Real Estate, LLC. (Taxpayer) protested this value to the Adams County Board of Equalization (County Board) and requested an assessed value of \$337,107 for tax year 2022.
4. The County Board determined that the taxable value of the Subject Property was \$429,624 for tax year 2022.
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 March 30, 2023, at Grand Island Police Department, 111 Public Safety Drive, Grand Island, Nebraska, Community Building 2nd Floor, before Commissioner James D. Kuhn.
7. Tricia Welton-Hinkle, Martin Hinkle, Makenzi Gangwish, and Shon Lieske was present at the hearing for the Taxpayer.

8. Jackie Russell (the Assessor), Shannon Bird (the Appraiser) and David Bergin (County Attorney) 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 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."³ 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."⁴
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.⁵

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² 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).

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

⁴ *Id.* at 283-84.

⁵ 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.⁶
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.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Taxpayer asserts that the increase in the Subject Property's value is excessive compared to its historical changes in value.
17. The Taxpayer asserts that the valuation of the Subject Property should be lowered due to damage on the property that prevented some spaces from being profitable.
18. Taxpayer provided a copy of an appraisal report with a valuation date of September 28, 2014, which gave a value opinion for the Subject Property of \$277,500. However, this appraisal report is nearly eight years removed from the valuation date for tax year 2022. The appraisal report is afforded little weight.
19. The Assessor testified that the entire downtown area had been revalued, which caused applicable property values to increase.
20. This revaluation was based upon the cost approach using updated depreciation and costing tables.
21. Prior to the County Board's decision, the County Assessor had received a profit and loss statement from the Taxpayer. The County Assessor used this new information to perform a re-

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

⁷ *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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

assessment using the income capitalization approach. The re-assessment produced a value opinion of \$429,624, which the County Assessor believes best represents the actual value of the property.

22. The County Board adopted the Assessor's revised valuation when deciding the Taxpayer's protest.
23. The Taxpayer also stated that there had been purchase offers made that ranged from to \$400,000 to \$450,000.
24. These purchase offers in fact support the County Board's decision.
25. The Taxpayer did not present any evidence that demonstrated that the County Assessor's revised assessment or methodology were incorrect.
26. 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.
27. 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 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Total	\$ 429,624
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3. This Decision and Order, if no further action is taken, shall be certified to the Adams County Treasurer and the Adams 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 2022.
7. This Decision and Order is effective on June 9, 2023.

Signed and Sealed: June 9, 2023



James D. Kuhn, Commissioner