

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

MARJORIE M. PHILLIPS
APPELLANT,

CASE NO: 22R 0175

V.

ADAMS COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Adams County, parcel number 010008177.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$441,132 for tax year 2022.
3. Marjorie M. Phillips (the Taxpayer) protested this value to the Adams County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$418,124 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. Marjorie M. Phillips was present at the hearing for the Taxpayer.
8. David Bergin (County Attorney), Jackie Russell (the Assessor), and Shannon Bird (the Appraiser) 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. Taxpayer alleges that the evaluation of Subject Property is overvalued for the condition of the property.
17. The Taxpayer states that the Subject Property has not been updated since it was originally built in 1975. Taxpayer stated the Subject Property was listed and shown four times in July 2022, but potential buyers were not interested due to the potential cost of updating the property.
18. The Taxpayer did not provide information to quantify what, if any value impact is caused by the need for updates to the Subject Property.
19. The Taxpayer provided a copy of a private appraisal report performed on the Subject Property in 2016. Contrary to the Taxpayer's allegations, the appraisal report indicates no functional or external obsolescence applied to the Subject

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).

For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 10, 2022 includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing*

Property. The appraisal report also notes the Subject Property was well maintained. However, the data and value opinion contained within the report is six years removed from the tax year on appeal and is unpersuasive.

20. Taxpayer alleged that the insurance company told the Taxpayer that a new roof was needed on the Subject Property. Taxpayer provided a repair estimate of \$85,742.96 to make needed repairs to the Subject Property.
21. The County conducted a physical inspection of Subject Property in 2022.
22. The County found the hail damage and explained that the damage would be covered by insurance.
23. Following the inspection, the Assessor's Office adjusted the condition rating of the Subject Property to Normal condition and recommended a lower valuation to the County Board of Equalization to account for the adjustment for condition. The recommended value by the Appraiser is \$418,124.
24. The Taxpayer did not provide evidence that the lowered condition rating was arbitrary or unreasonable.
25. The Commission finds the quality and condition rating of Normal as assigned to the Subject Property properly accounts for the necessary maintenance alleged by the Taxpayer.
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	\$418,124
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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 7, 2023.

Signed and Sealed: June 7, 2023



James D. Kuhn, Commissioner