

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

PAUL WIBBELS
APPELLANT,

CASE NO: 23R 0043

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 010000670.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$1,336,985 for tax year 2023.
3. Paul Wibbels (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 \$1,336,985 for tax year 2023.
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 December 8, 2023, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Paul C. Wibbels was present at the hearing for the Taxpayer.
8. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

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).

⁶ *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.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 stated the Subject Property's valuation increased 80% as compared to comparable properties that increased 7% or 8%. The Taxpayer stated he didn't feel he could sell the Subject Property for the current assessment value.
17. The Taxpayer had an independent appraiser, Hyde Appraisal, perform an appraisal of the Subject Property with an effective date of January 1, 2023. The Appraisal concluded a final value of \$900,000.
18. The Assessor stated there was a reappraisal in 2022 and new valuations were set. Value increases or decreases were not a set percentage but were new valuations using the newly updated 2022 costing tables replacing the old 2008 costing tables.
19. The Appraiser stated the Subject Property does not have any homes that are comparable in the neighborhood since the Subject Property is completely custom built and has nearly double the square footage of any other home in the neighborhood. The Appraiser provided a spreadsheet of comparable homes that are of the "same caliber" and custom built. The spreadsheet provides a price per square foot of similar caliber homes ranging from \$242.53 to 155.04. The Subject Property has a price per square foot of \$196.63. The Appraiser provided two sales of homes that have sold for over one million

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).

dollars in 2022. One sale was for \$1,299,000 on May 27, 2022 (this was also used in the Hyde appraisal as a comparable) and the second sale was for \$1,199,000 in July 2022. The second sale was not used in the Hyde appraisal.

20. The Commission analyzed the Hyde appraisal and found several questionable items. The sale in July 2022 for \$1,199,000 was not used as a comparable. Comparable number 4 is a Ranch style home which is not comparable to the Subject Property and the Hyde appraisal states "...no design adjustments have been applied...". Further, the gross dollar adjustment amounts of comparable properties 1, 2 & 4 are very large and without explanation in the Hyde Appraisal of how those adjustment amounts were derived. The Commission finds the Hyde Appraisal although competent evidence, not clear and convincing evidence for the reasons set forth above.
21. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. 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 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 102,532
<u>Improvements</u>	<u>\$1,234,453</u>
Total	\$1,336,985

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 2023.
7. This Decision and Order is effective on February 13, 2024.

Signed and Sealed: February 13, 2024



James D. Kuhn, Commissioner