

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

KENT M. HOLSTEN
APPELLANT,

CASE NO: 23R 0210

V.

ADAMS COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 010009980.
2. The Adams County Assessor (the County Assessor) assessed the Subject Property at \$279,707 for tax year 2023.
3. Kent M. Holsten (the Taxpayer) protested this value to the Adams County Board of Equalization (the County Board) and requested an assessed value of \$206,313 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$263,292 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 February 23, 2024, at Administration Building, first floor, 121 S. Pine Street, County Board Room, Grand Island, NE, before Commissioner James D. Kuhn.
7. Kent M. Holsten was present at the hearing for the Taxpayer.
8. Shannon Bird (the Appraiser) was 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 asserted the percentage increase in value of the Subject Property from 2022 tax year to 2023 tax year is excessive. The assessed value rose from \$181,107 in tax year 2022 to \$279,707 for tax year 2023. The Taxpayer stated no improvements have been made to the Subject Property in the last five years.
17. The Taxpayer provided eleven properties as comparables which shows an average assessed value of \$86 per square foot whereas the Subject Property is assessed at \$114 per square foot. The Taxpayer stated he used the main floor square footage as the denominator in determining the assessed price per square foot.
18. The Taxpayer argued the area of the staircase leading from the main floor to the basement shouldn't be included in the main floor living area. From the Appraisal Institute book, *Appraising Residential Properties, Fourth Edition*, the American National Standards for Single Family Residential Buildings: "3.4 ... However, the area of both stair treads and landings proceeding to the floor below is included in the finished area of the floor from which the stairs descend, not to exceed the area of the opening in the floor."
19. The Appraiser stated the Subject Property's neighborhood was revalued for the 2023 tax year as the valuation model needed

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).

updated for more current costing as well as what current sales were showing in the market. A blanket percentage increase was not used in the revalue of the Subject Property's neighborhood so each property would likely have different levels of increase or decrease in value.

20. After reviewing the Subject Property with Taxpayer, the Appraiser adjusted for square footage, basement finish, fireplace count, grade and condition which reflected a lower assessment of \$259,160. The Appraiser recommended the lower assessment to accurately reflect the value of the Subject Property for tax year 2023.
21. Simply averaging the assessed value per square foot is not an acceptable appraisal method as it does not account for the value of the components that attribute value to each specific property. Property Record Files (PRF) of the eleven comparable properties were not provided by the Taxpayer. Therefore, the Commission is unable to ascertain the actual comparability of each comparable to the Subject Property. The Taxpayer instead provided information printed off the Assessor's website which does not contain the detailed information of each property's components.
22. 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.
23. Clear and convincing evidence was adduced that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be reversed.

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 reversed.

2. The taxable value of the Subject Property for tax year 2023 is:

Total \$259,160

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 July 12, 2024.

Signed and Sealed: July 12, 2024



James D. Kuhn, Commissioner