

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

HERITAGE LAKES
APARTMENTS PROPERTY
OWNER LLC,
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 21C 0678,
22C 0856

DECISION AND ORDER
REVERSING THE DECISIONS
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

For the Appellant:

Timothy Moll,
Rembolt Ludtke LLP

For the Appellee:

Daniel J. Zieg,
Deputy Lancaster County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is an 11.45-acre commercial parcel located at 7100 S. 91st Street in Lincoln, Lancaster County, Nebraska. The Subject Property is improved with a 184-unit apartment complex built in 2010. The legal description and Property Record File (PRF) of the Subject Property for tax years 2021 and 2022 are found at Exhibits 5 and 10 respectively.

II. PROCEDURAL HISTORY

The Lancaster County Assessor (the County Assessor) determined the assessed value of the Subject Property was \$18,473,100 for tax

year 2021.¹ Heritage Lakes Apartments Property Owner LLC (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board) and requested a taxable value of \$15,941,000.² The County Board determined the taxable value of the Subject Property for tax year 2021 was \$18,473,100.³

For tax year 2022, the County Assessor determined the assessed value of the Subject Property was \$21,112,100.⁴ The Taxpayer protested this assessment to the County Board and requested a taxable value of \$16,848,000.⁵ The County Board determined the taxable value of the Subject Property for tax year 2022 was \$21,112,100.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 15, 2023. Prior to the hearing, the parties exchanged exhibits, as ordered by the Commission. Exhibits 1-32 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁷ When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.⁸ The first involves a presumption that the board of equalization has faithfully performed its official duties in making an assessment and has acted

¹ Exhibit 3:9.

² Exhibit 3:11.

³ Exhibit 1.

⁴ Exhibit 8:2.

⁵ *Id.*

⁶ Exhibit 2.

⁷ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁸ *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, ___ N.W.3d ___ (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

upon sufficient competent evidence to justify its action.⁹ 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.¹⁰

The second burden of proof requires that 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.¹¹ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.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.¹³ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹⁴

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁵ The County Board need not put on any evidence to support its valuation of the property at issue unless the Taxpayer establishes that the County Board's valuation was

⁹ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___ (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

¹⁰ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

¹¹ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

¹² *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

¹³ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

¹⁴ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___; *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁵ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

unreasonable or arbitrary.¹⁶

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.¹⁷ The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁸ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁹ The Commission's Decision and Order shall include findings of fact and conclusions of law.²⁰

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²¹

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371,

¹⁶ *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹⁷ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁸ *Id.*

¹⁹ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

²⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

²¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

(2) income approach, and (3) cost approach.²² Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.²³ Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.²⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁶

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.²⁷ “Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.”²⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.²⁹ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.³⁰ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is

²² *Id.* (citing Neb. Rev. Stat. § 77-1371).

²³ *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

²⁴ Neb. Rev. Stat. § 77-131 (Reissue 2018).

²⁵ See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020); Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

²⁶ Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2020); Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2022).

²⁷ Neb. Const., art. VIII, § 1.

²⁸ *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

²⁹ *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

³⁰ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

assessed at less than the actual value.³¹ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.³² There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.³³

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence and Analysis

1. Testimony of Philip Hughes

Phillip Hughes testified on behalf of the County Board. Hughes had been an employee of the County Assessor for two years.³⁴ Hughes testified the County Assessor considered a cost approach and an income approach to determine the actual value of the property.

Using the cost approach, the County Assessor determined the replacement cost new for each building and then applied a 22% depreciation deduction. The cost approach involves, “[a] set of procedures through which a value indication is derived for the fee simple estate by estimating the current cost to construct a reproduction of ... the existing structure... deducting depreciation from the total cost; and adding the estimated land value.”³⁵ Using this approach, the total replacement cost new less depreciation for the three buildings was \$18,747,859 for tax year 2021³⁶ and \$19,283,968

³¹ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³² *Pinnacle Enters.*, 320 Neb. at 310, ___ N.W.2d at ___ (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

³³ *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

³⁴ Exhibit 11.

³⁵ Appraisal Institute, *The Appraisal of Real Estate* 562 (14th ed. 2013).

³⁶ Exhibits 5:4, 5:6, and 5:8.

for tax year 2022.³⁷ The value of the land as though vacant was determined to be \$828,000.³⁸

Using the income approach to determine the actual value, the County Assessor concluded the value of the Subject Property was \$18,473,100 for tax year 2021³⁹ and \$21,112,100 for tax year 2022.⁴⁰

The Income Approach is a “set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value.”⁴¹ “In the income capitalization approach, an appraiser analyzes a property’s capacity to generate future benefits and capitalizes the income into an indication of present value.”⁴² The steps required for use of the income approach with direct capitalization may be summarized as (1) estimate potential gross income; (2) deduct estimated vacancy and collection loss to determine effective gross income; (3) deduct estimated operating expenses to determine net operating income; (4) divide net operating income by an estimated capitalization rate to yield the value.⁴³ Capitalization rates can be estimates with various techniques.⁴⁴

For tax year 2021, the County Assessor determined the potential gross income (PGI) was \$2,393,280 with vacancy and collection losses of 5%. Expenses were determined to be 35%. As a result, the net operating income (NOI) was calculated at \$1,477,850. A loaded capitalization rate of 8%⁴⁵ was then divided into the NOI, resulting in a value indication of \$18,473,100 using the Income Approach.⁴⁶

³⁷ Exhibits 10:4, 10:6, and 10:8.

³⁸ Exhibit 3:4.

³⁹ Exhibit 5:10.

⁴⁰ Exhibit 10:11.

⁴¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* 143 (“Income Capitalization Approach”) (4th ed. 2002).

⁴² Appraisal Institute, *The Appraisal of Real Estate* 439 (14th ed. 2013).

⁴³ *Id.* at 460.

⁴⁴ *Id.* at 492-508.

⁴⁵ The loaded capitalization rate was the sum of the capitalization rate of 6% plus the effective tax rate of 2%.

⁴⁶ Exhibit 5:10.

Likewise, for tax year 2022, the County Assessor, using the Income Approach, determined the potential gross income (PGI) was again \$2,393,280 with vacancy and collection losses of 5%. Expenses were again determined to be 35%. As a result, the net operating income (NOI) was again calculated at \$1,477,850. However, for tax year 2022, the loaded capitalization rate was determined to be only 7%.⁴⁷ This lower capitalization rate was then divided into the NOI, resulting in a higher value indication of \$21,112,100.⁴⁸

The assessments by the County Assessor for both tax years relied upon the income approach calculations described above.

2. Referee Recommendations

During the protest proceedings for both tax years, the County Board appointed a referee to consider the protests of the Taxpayer.⁴⁹ For both tax years, the referee recommended no change to the value determinations made by the County Assessor.⁵⁰ For both tax years, the County Board adopted the recommendations made by the referee.⁵¹

3. Testimony of Peter Helland

Peter Helland testified on behalf of the Taxpayer. Helland, at all relevant times, was a Certified General Real Estate Appraiser with an MAI designation from the Appraisal Institute and was employed with Newmark Knight Frank Valuation & Advisory, LLC. As a Certified General Appraiser, Helland was licensed by the Nebraska Real Estate Appraiser Board to perform appraisals giving an opinion of value for commercial real estate. Helland had been a licensed appraiser for more than 15 years.⁵²

Helland completed separate appraisal reports for the Subject

⁴⁷ The loaded capitalization rate was the sum of the capitalization rate of 5% plus the effective tax rate of 2%.

⁴⁸ Exhibit 10:11.

⁴⁹ Neb. Rev. Stat. § 77-1502.01 (Reissue 2018).

⁵⁰ Exhibits 3:5-8 and 8:156.

⁵¹ Exhibits 3:9 and 8:157.

⁵² Exhibit 13:129.

Property for each tax year.⁵³ The appraisal reports were prepared in compliance with the Uniform Standards of Professional Appraisal Practice and were retrospective market value opinions for the respective effective dates of January 1, 2021, and January 1, 2022.⁵⁴

The appraisals considered all three appraisal approaches to value the Subject Property. Helland testified he reconciled the three value conclusions and relied most heavily on the income approach value, as the Subject Property was income-producing.⁵⁵

Helland analyzed five sales to determine the valuation of the land. His conclusion was that the land valuation as though vacant was \$1,750,000 for both tax years.⁵⁶ In his cost approach for tax year 2021, he concluded the value of the improvements was \$14,600,000.⁵⁷ In his sales comparison approach for tax year 2021, he analyzed five comparable sales and reached a value conclusion of \$15,600,000.⁵⁸ Helland's income approach for tax year 2021 concluded a value of \$15,600,000.⁵⁹

For tax year 2022, his cost approach conclusion was a value of the improvements of \$17,700,000.⁶⁰ In his sales comparison approach for tax year 2022, he analyzed six comparable sales and reached a value conclusion of \$17,500,000.⁶¹ Helland's income approach for tax year 2022 concluded a value of \$18,600,000.⁶²

⁵³ Exhibits 13 and 14.

⁵⁴ Exhibits 13:4 and 14:4. Exhibits 13:3 and 14:3.

⁵⁵ The Cost Approach is less persuasive when the improvements are not newer and have experienced significant depreciation. Certain conditions of the improvements, including whether they are new, "may make the cost approach less reliable." Appraisal Institute, *The Appraisal of Real Estate* 567-68 (14th ed. 2013).

⁵⁶ Exhibit 13:53-56, Exhibit 14:55-58.

⁵⁷ Exhibits 13:57-61.

⁵⁸ Exhibits 13:62-66.

⁵⁹ Exhibit 13:67-90.

⁶⁰ Exhibits 14:59-62.

⁶¹ Exhibits 14:63-68.

⁶² Exhibit 14:69-94.

Helland's value conclusions⁶³ are shown in the chart below.

Helland Appraisals	Tax Year 2021	Tax Year 2022
Cost Approach	\$14,600,000	\$17,700,000
Sales Approach	\$15,600,000	\$17,500,000
Income Approach	\$15,600,000	\$18,600,000
Reconciliation	\$15,600,000 ⁶⁴	\$18,000,000 ⁶⁵

As noted above, a presumption 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 is rebutted when there is competent evidence adduced on appeal to the contrary. An appraisal report that is compliant with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) constitutes competent evidence to rebut that presumption. Since the Helland appraisals were prepared in compliance with USPAP, there is competent evidence rebutting the presumption in both appeals.

Since the presumption has been rebutted, the reasonableness of the valuation fixed by the board of equalization is based upon all the evidence presented. The Commission gives great weight to the appraisals performed by Helland. The Commission therefore finds that Helland's appraisal opinions of value constitute clear and convincing evidence that the County Board determinations were arbitrary or unreasonable.

⁶³ Exhibit 13:13-14; Exhibit 14:13-14.

⁶⁴ Exhibit 13:91-92.

⁶⁵ Exhibit 14:95-96.

VI. CONCLUSION

The Commission finds there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds there is clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.⁶⁶

For the reasons set forth above, the determinations of the County Board should be vacated and reversed.

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Lancaster County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is **\$15,600,000**.
3. The taxable value of the Subject Property for tax year 2022 is **\$18,000,000**.
4. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2021 and 2022.

⁶⁶ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

8. This Decision and Order is effective for purposes of appeal on January 12, 2026.⁶⁷

Signed and Sealed: January 12, 2026

SEAL



Robert W Hotz, Commissioner

James D. Kuhn, Commissioner

⁶⁷ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.