

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

72HARTMAN LLC,
APPELLANT,

CASE NO: 21C 0949

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

**DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION**

I. BACKGROUND

1. The Subject Property is a commercial parcel in Douglas County, parcel number 0143360004.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$1,303,900 for tax year 2021.
3. 72Hartman LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$1,303,900 for tax year 2021.
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 21, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Arun Agarwal and Drew Grinbergs were present at the hearing for the Taxpayer.
8. Keith Nielson with the County Assessor's Office (the County 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 the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.³
12. The first involves 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.⁴ 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.⁵
13. 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.⁶ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

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 *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, 27 N.W.3d 1, 6 (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)).

⁴ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (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).

⁵ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

⁶ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

⁷ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

14. 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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹
15. The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.¹⁰ 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 unreasonable or arbitrary.¹¹
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.¹² The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹³ 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.¹⁴ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁵

⁸ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁹ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6; *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Wheatland Indus., LLC v. Perkins Cty. Bd. of Equalization*, 304 Neb. 638, 935 N.W.2d 764 (2019) (quoting *Botdorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ *Id.*

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Subject Property is an 18.31-acre parcel improved with a 1,792 square foot clubhouse constructed in 1993. The clubhouse has a quality rating of low and a condition rating of worn out.
18. The Taxpayer alleged that the clubhouse improvement on the Subject Property should have a lower assessed value as it was removed from the Subject Property in 2021.
19. The County Appraiser stated that the clubhouse improvement was still on the Subject Property as of the January 1, 2021, assessment date and that the quality and condition ratings reflected its state prior to demolition.
20. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the commercial properties in the area, including the Subject Property. The PRF contains photographs of the Subject Property prior to and just after the demolition of the clubhouse improvement.
21. The Taxpayer has not presented information to show that the County Assessor's determination of low quality and worn out condition for the clubhouse improvement as of the assessment date was unreasonable or arbitrary.
22. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
23. The Taxpayer presented a table containing information regarding the assessed values of the Subject Property and seven other properties and requested a value based on an average of their assessed values.
24. The Taxpayer presented the Property Record File (PRF) for the three of the seven properties contained in the table.

25. “Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable.”¹⁶
26. The County Appraiser stated that at least one of the properties on the Taxpayer’s table was assessed as agricultural property which is a different class of real property, and that the other properties he was familiar with were not comparable the Subject Property due to their locations, specialized uses, or size.
27. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁷ The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.¹⁸ The Taxpayer’s requested value was determined by averaging assessed values of other properties. Averaging assessed values does not account for differences in the characteristics of the properties whose assessed values are being averaged.¹⁹ The Commission finds the requested value based on averaging assessed values does not constitute competent evidence and gives it little weight.
28. The Taxpayer presented information about a property located adjacent to the Subject Property on the west that is assessed at a lower amount per square foot than the Subject Property (The Western Property).
29. The County Appraiser stated that the Subject Property and the Western Property were not comparable due to differences in their topography.
30. Mr. Agarwal stated that the Taxpayer owns both the Subject Property and the Western Property and he was familiar with both parcels. Agarwal discussed the condition of both parcels including their location, topography, and accessibility.

¹⁶ *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).

¹⁷ Neb. Rev. Stat. § 77-112 (Reissue 2018).

¹⁸ *Id.*

¹⁹ See, e.g., Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

31. The Commission finds that the Subject Property and the Western Property are similarly situated and comparable.
32. The Subject Property is assessed at \$1.63 per square foot and the Western Property is assessed at \$0.61 per square foot.
33. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²⁰
34. The Commission finds that the equalized value of the Subject Property is \$514,300.²¹
35. 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.
36. The Taxpayer has 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 vacated.

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 2021 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$486,500
<u>Improvements</u>	<u>\$ 27,800</u>
Total	\$514,300

²⁰ *Scribante v. Douglas County Board of Equalization*, 8 Neb. App. 25, 39, 588 N.W.2d 190, 199 (1999).

²¹ 797,583 square feet x \$0.61 per square foot = \$ 486,525 land value + \$27,767 improvement value = \$514,300 Rounded.

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
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 2021.
7. This Decision and Order is effective on March 5, 2026.

Signed and Sealed: March 5, 2026.



Steven A. Keetle, Commissioner