

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

THOMAS F. WERNER  
APPELLANT,

V.

KEITH COUNTY BOARD OF  
EQUALIZATION,  
APPELLEE.

CASE NOS: 22R 0282, 23R  
0487, 24R 0274, 25R 0053

DECISION AND ORDER  
REVERSING THE DECISION  
OF THE KEITH COUNTY  
BOARD OF EQUALIZATION

**I. BACKGROUND**

1. The Subject Property consists of a residential improvement on leased land in Keith County, parcel number 330114400.
2. The Keith County Assessor (the County Assessor) assessed the Subject Property at:

\$1,097,210 for tax year 2022  
\$1,177,750 for tax year 2023  
\$1,309,580 for tax year 2024  
\$1,209,560 for tax year 2025

3. Thomas F. Werner (the Taxpayer) protested these values to the Keith County Board of Equalization (the County Board) and requested assessed values of:

\$750,000 for tax year 2022  
\$939,573 for tax year 2023  
\$750,000 for tax year 2024  
\$750,000 for tax year 2025

4. The County Board determined that the taxable value of the Subject Property was:

\$1,097,210 for tax year 2022

\$1,177,750 for tax year 2023  
\$1,184,115 for tax year 2024  
\$1,209,560 for tax year 2025

5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 14, 2024, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner Jackie S. Russell.
7. Tom & Lynne Werner (Taxpayers) were present at the hearing and Jeff Dunn (Independent Appraiser) appeared telephonically, for the Taxpayers.
8. Randy Fair (County Attorney), Shandra McNerny (County Assessor), and Amanda Harger (Deputy Assessor) 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is *de novo*.<sup>2</sup>
11. When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.<sup>3</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *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)).

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.<sup>4</sup> 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.<sup>5</sup>
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.<sup>6</sup> The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>7</sup>
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.<sup>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>
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.<sup>10</sup> The County Board need not put on any evidence to support its valuation of the property at

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<sup>4</sup> *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).

<sup>5</sup> *Pinnacle Enters.*, 320 Neb. at 309, \_\_\_ N.W.3d at \_\_\_.

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

<sup>7</sup> *Pinnacle Enters.*, 320 Neb. at 309, \_\_\_ N.W.3d at \_\_\_. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

<sup>8</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>9</sup> *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).

<sup>10</sup> 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).

issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>11</sup>

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.<sup>12</sup> The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>13</sup> 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.<sup>14</sup> The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>15</sup>

### **III. FINDINGS OF FACT & CONCLUSIONS OF LAW**

17. The Subject Property is an improvement on land leased from Central Nebraska Public Power on the southeast side of Lake McConaughy, which is designated as the K1 neighborhood (9002). The house is a two-story rustic log style home built in 2002 with above grade area of 2,912 square feet (SF), basement area of 1,456 SF of which 1,310 SF is fully finished. There are 12 plumbing fixtures, a single 2-story fireplace, and a built-in garage with 900 SF. The overall quality rating is 4.50 for "good plus," and the condition rating is 6.0 for "good."

18. The Taxpayers argued that the Subject Property value is arbitrary and unreasonable for tax years 2022-2025 based on the submitted retrospective appraisals for tax years 2022-2024

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<sup>11</sup> *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)).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>13</sup> *Id.*

<sup>14</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

completed by certified residential appraiser, Jeff Dunn (Mr. Dunn) with Mid Plains Appraisal (Dunn Appraisals).

19. Mr. Dunn appeared telephonically to provide testimony regarding the analyses contained in the submitted appraisals of the Subject Property.
20. The Assessor stated that the valuations for each year were based on an assessment-to-sales ratio analysis applied uniformly and proportionately across all properties in the Subject Property neighborhood with the exception of 2024. In tax year 2024, a new opinion of value was given to the Board of Equalization during the protest process based on a walk-thru of the property with some changes to the property data reflecting a new valuation.
21. “A primary tool for measuring the ratio of assessment to actual value is the assessment-to-sales ratio.”<sup>16</sup> “This ratio is calculated by dividing a parcel of property's assessed value by the sales price of that parcel of property.”<sup>17</sup>
22. “[U]sing this ratio and using the median as the indicator of central tendency for a class or subclass of property, the median assessment-to-sales ratio would need to fall between 92 and 100 percent to be within the acceptable range.”<sup>18</sup> Such studies may also be used by assessing officials in establishing assessed valuations.<sup>19</sup>
23. An assessment-to-sales ratio analysis does not account for differences in components of contributory value when determining value, but rather, applies a uniform adjustment to all properties in a market area based on the sales available for analysis.
24. The Dunn Appraisals presented by the Taxpayer indicate on their respective Certifications page that the appraiser has

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<sup>16</sup> *Cty. of Douglas v. Nebraska Tax Equal. & Rev. Comm'n*, 296 Neb. 501, 509, 894 N.W.2d 308, 314 (2017) (citing 442 Neb. Admin. Code ch 9, § 002.02 (6/2011)).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Neb. Rev. Stat. §77-1327(3).

conformed to Uniform Standards of Professional Appraisal Practice when compiling and completing each appraisal.

25. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>20</sup>
26. The Dunn Appraisals for tax years 2022-2024 place the most weight on a sales comparison analysis which analyzed the components of contributory value of all of the comparable properties included in each report to determine the Subject Property's value for each year.
27. The Commission finds and determines that the Dunn Appraisals for tax years 2022-2024 constitute competent evidence concerning the value of the Subject Property and that the presumption in favor of the County Board's determination is rebutted.
28. The Commission finds that the Dunn Appraisals for tax years 2022-2024 constitute clear and convincing evidence of the actual value of the Subject Property for the appealed tax years of 2022-2024 at a total value of \$750,000 for each of those tax years.
29. The Commission finds that the uniform and proportionate action in the absence of additional evidence to value for 2025, is to apply the Assessor's assessment-to-sales ratio analysis results to the Subject Property value from 2024. The analysis resulted in a 3% reduction to improvements in the K1 neighborhood according to the Assessor's 2025 assessment actions.<sup>21</sup>
30. The Commission finds the improvement value for 2025 to be \$659,600.<sup>22</sup>
31. The Taxpayer has produced sufficient competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

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<sup>20</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>21</sup> Assessor's 2025 Assessor Methodology at pg 7.

<sup>22</sup> Improvement value of 2024 = \$750,000 - \$70,000 land value = \$680,000.  
Improvement value of 2025 = \$680,000\*.97 = \$659,600

32. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

#### IV. ORDER

##### IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2022, 2023, 2024, and 2025 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2022, 2023, 2024, and 2025 are as follows:

Tax Year	Land Value	Improvement Value	Total
2022	\$70,000	\$680,000	\$750,000
2023	\$70,000	\$680,000	\$750,000
2024	\$70,000	\$680,000	\$750,000
2025	\$70,000	\$659,600	\$729,600

3. This Decision and Order, if no further action is taken, shall be certified to the Keith County Treasurer and the Keith 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 years 2022, 2023, 2024, and 2025.
7. This Decision and Order is effective on January 21, 2026.

Signed and Sealed: January 21, 2026



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Jackie S. Russell, Commissioner