

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

HIDDEN BROOK
TOWNHOMES II, LLC,
APPELLANT,

V.

DODGE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NOS: 22R 0304, 22R
0305, 22R 0306, 22R 0307, 22R
0308, 22R 0309

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE DODGE COUNTY
BOARD OF EQUALIZATION

CASE NOS: 22R 0302,
22R 0303, 22R 0310, 22R 0311

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

I. BACKGROUND

1. The Subject Properties are ten residential parcels located in Dodge County, parcel numbers: 270141077, 270141078, 270141079, 270141080, 270141081, 270141082, 270141083, 270141084, 270141085, and 270141086.
2. The Dodge County Assessor (the County Assessor) assessed the Subject Properties for tax year 2022.
3. Hidden Brook Townhomes II, LLC (the Taxpayer) protested these values to the Dodge County Board of Equalization (the County Board).

4. The County Board determined that the taxable values of the Subject Properties were as follows for tax year 2022:

Case No	County Assessor	County Board
22R 0302	\$263,606	\$159,284
22R 0303	\$263,606	\$159,284
22R 0304	\$73,362	\$73,362
22R 0305	\$83,153	\$83,163
22R 0306	\$55,190	\$55,190
22R 0307	\$54,863	\$54,863
22R 0308	\$29,730	\$29,730
22R 0309	\$28,314	\$28,314
22R 0310	\$263,606	\$159,284
22R 0311	\$263,606	\$159,284

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 October 20, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Nathan Clark and Jeremiah Perkins of Cline Williams, Wright, Johnson and Oldfather, LLP and Christy Larson were present at the hearing for the Taxpayer.
8. Pam Hopkins, Dodge County Attorney, and Mitch Heart with the County Assessor's Office 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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

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,'

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
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

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.

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).

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. Rent-restricted housing projects, commonly known as Section 42 housing projects, shall be valued by the assessor using an income-approach calculation that uses the capitalization rate contained in a report by the Rent-Restricted Housing Projects Valuation Committee and the actual income and expense data of the project from the prior year.¹²
17. If the actual income and actual expense data required to be filed for a rent-restricted housing project under subsection (5) of this section is not filed in a timely manner, the county assessor may use any method for determining actual value for such rent-restricted housing project that is consistent with professionally accepted mass appraisal methods described in section 77-112.¹³
18. If a county assessor, based on the facts and circumstances, believes that the income-approach calculation does not result in a valuation of a rent-restricted housing project at actual value, then the county assessor shall present such facts and circumstances to the county board of equalization. If the county board of equalization, based on such facts and circumstances, concurs with the county assessor, then the county board of equalization shall petition the Tax Equalization and Review Commission to consider the county assessor's utilization of

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 *Bottorf v. Clay Cty. Bd. of Equal.*, 7 Neb. App. 162, 168, 580 N.W.2d 561, 566 (1998)).

¹² Neb. Rev. Stat. § 77-1333(1)-(8) (Reissue 2018)

¹³ Neb. Rev. Stat. § 77-1333(9) (Reissue 2018)

another professionally accepted mass appraisal technique that, based on the facts and circumstances presented by a county board of equalization, would result in a substantially different determination of actual value of the rent-restricted housing project.¹⁴

19. 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.¹⁵ The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.¹⁶ 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.¹⁷ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

20. The Subject Properties are ten parcels that the Taxpayer is developing as a rent restricted housing project (the Project). The Project when complete would consist of ten parcels, each parcel improved with a townhome.
21. The Taxpayer presented the Land Use Restriction Agreement (LURA) for the Project which was signed by the Taxpayer's representative on December 9, 2022, the Nebraska Investment Finance Authority representative on November 16, 2022, the lender Cornerstone Bank's representative on November 29, 2022, the lender Nebraska Department of Economic Development on November 22, 2022, and the lender Fremont

¹⁴ Neb. Rev. Stat. § 77-1333(10) (Reissue 2018)

¹⁵ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁶ *Id.*

¹⁷ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

Housing Agency representative on December 9, 2022. The LURA was filed with the Dodge County Register of Deeds on December 9, 2022.

22. As of the 2022 assessment date,¹⁹ four of the ten townhomes were complete, two of the other parcels had partially completed townhomes, and the remaining four parcels were unimproved.
23. The Taxpayer filed a Section 42 – Rent Restricted Housing Project Report Form (the Report Form) with the Nebraska Department of Revenue in 2021, which would be used for the tax year at issue in these appeals.
24. The Report Form, however, did not contain actual income and expense data of the Project from the prior year, but rather *pro forma* estimates.
25. At the protest hearing the County Board used the *pro forma* figures submitted by the Taxpayer on the Report Form and the capitalization rate reported pursuant to §77-1333(7) to calculate a value for the Project and allocated that value among only the parcels that were fully constructed as of the assessment date.
26. The Taxpayer alleged that the *pro forma* estimated numbers submitted on the Report Form and the capitalization rate reported pursuant to § 77-1333(7) should be used to calculate a value for all of the Subject Properties.
27. The Taxpayer presented a valuation analysis using the *pro forma* estimates of income and expenses for the Project.
28. Neb. Rev. Stat. § 77-1333 requires the use of the actual income and expenses for the Project from the prior year.²⁰
29. Because the actual income and expense information was not submitted as required, the County Assessor may value the Subject Property using any professionally accepted mass appraisal methods described in section 77-112 for tax year

¹⁹ January 1, 2022. See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

²⁰ Neb. Rev. Stat. §77-1333(1)-(8) (Reissue 2018), See also, *Lincoln Cty. Bd. of Equal. v. Western Tabor Ranch Apts.*, 314 Neb. 582, 991 N.W.2d 889 (2023). Neb Rev. Stat. §77-1333(5) was amended by 2024 Neb. Laws. LB 1317, §76, to allow estimated income and expenses for the first year of operation taken from the application for an allocation of tax credits or private activity bonds but that language was not effective for tax year 2022.

- 2022.²¹ The County Assessor is no longer required to use the income approach under § 77-1333.
30. The Commission has the power and duty to determine on appeal whether the income approach would result in actual value and to substitute whatever method it deems suitable to determine actual value.²²
 31. “Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties).”²³
 32. The Taxpayer presented its profit and loss statement for the date range of October 2022 to September 2023.
 33. The Taxpayer did not present information to demonstrate that the *pro forma* estimates or the reported figures of the Project for October 2022 to September 2023 reflected typical figures for comparable properties.
 34. The information before the Commission does not support the use of the *pro forma* estimates as requested by the Taxpayer to assess all of the Subject Properties or as used by the County Board to assess some of the Subject Properties.
 35. The Property Record Files (PRFs) for the Subject Properties indicate that they were valued by the County Assessor using the cost approach.
 36. The PRFs show that the County Assessor used recent sales to determine the assessed value of the land component of all of the Subject Properties.
 37. “The cost approach is applicable to virtually all improved parcels and, if used properly, can produce accurate valuations.”²⁴
 38. “The cost approach is more reliable for newer structures of standard materials, design, and workmanship.”²⁵

²¹ Neb. Rev. Stat. §77-1333(9) (Reissue 2018)

²² *Western Tabor Ranch Apts.*, 314 Neb. 582, 991 N.W.2d 889.

²³ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

²⁴ *Id.*

²⁵ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

39. The Taxpayer alleged that the cost approach does not account for the impact of the LURA on the value of the Subject Properties. However, the Taxpayer did not present information to demonstrate the impact of the LURA on the value of the Subject Properties.
40. The information before the Commission demonstrates that the determination of value made by the County Assessor using the sales comparison methodology to determine lot value and the cost approach to determine the value of the improvements best represents the actual value of the Subject Properties as of the assessment date.
41. 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.
42. In Cases No. 22R 0304, 22R 0305, 22R 0306, 22R 0307, 22R 0308, and 22R 0309 the Taxpayer has not 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 affirmed.
43. In Cases No. 22R 0302, 22R 0303, 22R 0310, and 22R 0311 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 and reversed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable values of the Subject Properties in Case No. 22R 0304, 22R 0305, 22R 0306, 22R 0307, 22R 0308, and 22R 0309 for tax year 2022 are affirmed.
2. The decisions of the County Board of Equalization determining the taxable values of the Subject Properties in Case Nos. 22R

0302, 22R 0303, 22R 0310, and 22R 0311 for tax year 2022 are vacated and reversed.

3. The taxable value of the Subject Properties for tax year 2022 are:

Case No	Value
22R 0302	\$263,606
22R 0303	\$263,606
22R 0304	\$73,362
22R 0305	\$83,153
22R 0306	\$55,190
22R 0307	\$54,863
22R 0308	\$29,730
22R 0309	\$28,314
22R 0310	\$263,606
22R 0311	\$263,606

4. This Decision and Order, if no further action is taken, shall be certified to the Dodge County Treasurer and the Dodge County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
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 2022.
8. This Decision and Order is effective on April 8, 2026.

SIGNED AND SEALED: April 8, 2026.

SEAL



Steven A. Keetle, Commissioner