

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

THE ROW FREMONT, LP
APPELLANT,

V.

DODGE COUNTY BOARD OF
EQUALIZATION,
APPELLEE.

CASE NOS: 22R 0331,22R
0332, 22R 0333, 22R 0334, 22R
0335, 22R 0336, 22R 0337, 22R
0338, 22R 0339, 22R 0340, 22R
0341, 22R 0342, 22R 0343, 22R
0344, 22R 0345, 22R 0346, 22R
0347, 22R 0348, 22R 0349, 22R
0350, 22R 0351, 22R 0352, 22R
0353, 22R 0354, 22R 0355

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

I. BACKGROUND

1. The Subject Property consists of twenty-five residential parcels in Dodge County, parcel numbers 270141141, 270141142, 270141143, 270141144, 270141145, 270141146, 270141147, 270141148, 270141149, 270141150, 270141151, 270141152, 270141153, 270141154, 270141155, 270141159, 270141160, 270141161, 270141162, 270141163, 270141167, 270141168, 270141169, 270141170, and 270141171.
2. The Dodge County Assessor (the County Assessor) assessed the Subject Properties for tax year 2022.
3. The Row Fremont, LP (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 0331	140,774	140,774
22R 0332	135,835	135,835
22R 0333	135,835	135,835
22R 0334	135,835	135,835
22R 0335	136,416	136,416
22R 0336	162,378	162,378
22R 0337	159,189	159,189
22R 0338	159,189	159,189
22R 0339	159,189	159,189
22R 0340	163,561	163,561
22R 0341	129,217	129,217
22R 0342	124,845	124,845
22R 0343	124,845	124,845
22R 0344	124,845	124,845
22R 0345	128,034	128,034
22R 0346	163,798	163,798
22R 0347	159,189	159,189
22R 0348	159,189	159,189
22R 0349	159,189	159,189
22R 0350	163,798	163,798
22R 0351	162,378	162,378
22R 0352	159,189	159,189
22R 0353	159,189	159,189
22R 0354	159,189	159,189
22R 0355	164,981	164,981

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 Ward F. Hoppe 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
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

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,' 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.

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
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-

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).

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)

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 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

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

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).

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

20. The Subject Properties are twenty-five residential parcels, each improved with a two-story, single-family townhome constructed in 2021 and developed as part of a rent restricted housing project (the Project).
21. The Taxpayer presented the Land Use Restriction Agreement (LURA) for the Project, which was signed by the Taxpayer's representative on December 9, 2021, the Nebraska Investment Finance Authority representative on December 8, 2021, the lender, Midwest Housing Development Fund, Inc's representative on December 10, 2021, and the lender, Nebraska Department of Economic Development, on December 10, 2021. The LURA was filed with the Dodge County Register of Deeds on December 22, 2021.
22. The Taxpayer did not file 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.
23. Neb. Rev. Stat. § 77-1333 requires the use of the actual income and expenses for the Project from the prior year.¹⁹
24. Because the actual income and expense information was not submitted as required, the County Assessor may value the Subject Properties that are part of the Project using any professionally accepted mass appraisal methods described in section 77-112 for tax year 2022.²⁰ The County Assessor is not required to use the income approach under § 77-1333.
25. The Property Record Files (PRFs) for the Subject Properties indicate that they were valued by the County Assessor using the Cost Approach.

¹⁹ 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). Note, 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.

²⁰ Neb. Rev. Stat. §77-1333(9) (Reissue 2018)

26. “The cost approach is applicable to virtually all improved parcels and, if used properly, can produce accurate valuations.”²¹
27. “The cost approach is more reliable for newer structures of standard materials, design, and workmanship.”²²
28. The Taxpayer alleged that the cost approach does not account for the impact of the LURA on the value of the Subject Properties.
29. The Taxpayer filed a Section 42 – Rent Restricted Housing Project Report Form (the Report Form) with the Nebraska Department of Revenue in 2022 and 2023, which would be used for the tax years following the tax year at issue in these appeals. The 2022 and 2023 Report Forms were presented to the Commission.
30. The Taxpayer presented *pro forma* estimates of income and expenses for the Project.
31. The Taxpayer presented a valuation analysis using the *pro forma* estimates of income and expenses for the Project.
32. The Taxpayer alleged that the *pro forma* estimated numbers and the capitalization rate reported pursuant to §77-1333(7) should be used to calculate a value for the Subject Properties and that the 2022 and 2023 Report Forms supported the proforma numbers.
33. 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.²³
34. “Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties).”²⁴

²¹ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.2 (July 2017).

²² *Id.*

²³ *Western Tabor Ranch Apts.*, 314 Neb. 582, 991 N.W.2d 889.

²⁴ International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

35. The Taxpayer did not present information to demonstrate that the *pro forma* estimates or 2022 and 2023 Report Forms reflected typical figures for comparable properties.
36. 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.
37. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
38. 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.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2022 are affirmed.
2. The taxable value of the Subject Properties for tax year 2022 are:

Case No	Value
22R 0331	140,774
22R 0332	135,835
22R 0333	135,835
22R 0334	135,835
22R 0335	136,416
22R 0336	162,378
22R 0337	159,189
22R 0338	159,189
22R 0339	159,189

Case No	Value
22R 0340	163,561
22R 0341	129,217
22R 0342	124,845
22R 0343	124,845
22R 0344	124,845
22R 0345	128,034
22R 0346	163,798
22R 0347	159,189
22R 0348	159,189
22R 0349	159,189
22R 0350	163,798
22R 0351	162,378
22R 0352	159,189
22R 0353	159,189
22R 0354	159,189
22R 0355	164,981

3. 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.
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 2022.
7. This Decision and Order is effective on April 8, 2026.

SIGNED AND SEALED: April 8, 2026.

SEAL



Steven A. Keetle, Commissioner