

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

JAMES D CAWLEY  
APPELLANT,

CASE NOS: 23A 0678 &  
24A 0621

V.

MORRILL COUNTY BOARD  
OF EQUALIZATION,  
MICHAEL & LISA SMITH  
APPELLEES.

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

**I. BACKGROUND**

1. The Subject Property is an improved agricultural parcel in Morrill County, parcel number 200119756.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$215,320 for tax year 2023, and \$225,620 for tax year 2024.
3. Michael & Lisa Smith (the Taxpayers) protested these values to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$172,195 for tax year 2023 and \$175,000 for tax year 2024.
4. The County Board determined that the taxable value of the Subject Property was \$175,000 for tax year 2023, and \$184,730 for tax year 2024.
5. James D. Cawley, Deputy County Assessor, 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 1, 2025, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner Jackie S. Russell.
7. Robert Brenner, Attorney, and James D Cawley, Deputy County

- Assessor, were present at the hearing for the Appellant.
8. Kirk Fellhoelter, County Attorney, was present for the County Board.
  9. Michael O. and Lisa L. Smith were present for the Taxpayers.

## II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
12. When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.<sup>3</sup>
13. 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>
14. 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

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

<sup>2</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cnty. 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 Cnty. 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)).

<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.

unreasonable rests upon the taxpayer on appeal from the action of the board.<sup>7</sup>

15. 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>
16. 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 issue unless the Taxpayer establishes that the County Board's valuation was unreasonable or arbitrary.<sup>11</sup>
17. 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

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<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).

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

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

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

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

18. The Subject Property is a one-story, modular home, built in 2018 with above grade area of 1,456 square feet (SF) over an unfinished walkout basement area. There are seven plumbing fixtures, and a detached garage with 1,200 SF. The overall quality and condition ratings are average. The parcel contains 16.63 acres of which 15.63 are assessed as grassland.
19. Mr. Cawley argued there was no basis for the County Board's decision to lower the Subject Property's value which made the action arbitrary and unreasonable, and caused disequalization in the Subject Property's neighborhood.
20. Mr. Cawley stated that the 2023 valuation received a percentage increase adjustment based on an assessment-to-sale ratio analysis which was applied uniformly to all properties in the Subject Property's valuation group and included a copy of the 2023 Reports and Opinions of the Property Tax Administrator as supportive evidence.
21. "A primary tool for measuring the ratio of assessment to actual value is the assessment-to-sales ratio. This ratio is calculated by dividing a parcel of property's assessed value by the sales price of that parcel of property."<sup>16</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>17</sup>
23. An assessment-to-sales ratio analysis does not account for

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

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

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

<sup>17</sup> *Id.*, 296 Neb. at 509, 894 N.W.2d at 314.

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. “Such studies may also be used by assessing officials in establishing assessed valuations.”<sup>18</sup>

24. Mr. Cawley stated that the Subject Property received a land value increase for 2024 based on a sales comparison analysis of agriculture land sales within Morrill County. Adjustments were made to the land value tables and applied uniformly to the respective Land Capability Groups across the market area.
25. Mr. Cawley provided supplemental documents including an equalization study, Property Record Files (PRFs) of the parcels discussed at the hearing, and the Reports and Opinions of the Property Tax Administrator for tax years 2023 and 2024 for the Commission to review.
26. The Taxpayers argued that the valuation increase in 2023 and 2024 were arbitrary and unreasonable.
27. The assessed value for real property may be different from year to year according to the circumstances. <sup>19</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation. <sup>20</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>21</sup>
28. Neither the Taxpayers nor the County Board presented information to demonstrate that the values for tax year 2023 or 2024 as set by the County Assessor were arbitrary or unreasonable.
29. The Appellant 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>18</sup> Neb. Rev. Stat. § 77-1327(3) (Reissue 2018).

<sup>19</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>20</sup> *Id.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>21</sup> *Kohl’s Dep’t Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

30. The Appellant 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 2023 and tax year 2024 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 18,185
<u>Improvements</u>	<u>\$197,135</u>
Total	\$215,320

3. The taxable value of the Subject Property for tax year 2024 is:

Land	\$ 27,915
<u>Improvements</u>	<u>\$197,705</u>
Total	\$225,620

4. This Decision and Order, if no further action is taken, shall be certified to the Morrill County Treasurer and the Morrill 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 2023 and 2024.
8. This Decision and Order is effective on January 16, 2026.

Signed and Sealed: January 16, 2026



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Jackie S. Russell, Commissioner