

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

TERRY A. DAVIS,
APPELLANT,

CASE NO: 23C 1347

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Douglas County, parcel number 2412330002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$451,300 for tax year 2023.
3. Terry A. Davis (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 \$451,300 for tax year 2023.
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 January 17, 2024, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. The Taxpayer was present at the hearing.
8. Keith Nielsen, 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. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁶
14. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the

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, ___ 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)).

⁴ *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).

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

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

order, decision, determination, or action was unreasonable or arbitrary.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹ 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.¹⁰
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹¹

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Subject Property is a commercial property improved with a 6,000 square foot metal frame storage warehouse constructed in 2003. The Subject Property has quality and condition ratings of average.
18. The Taxpayer alleged that the increase in the assessed value of the Subject Property, particularly in relation to other properties, from the prior assessment was unreasonable or arbitrary.
19. The assessed value for real property may be different from year to year according to the circumstances.¹² For this reason, a prior year's assessment is not relevant to the subsequent year's

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁹ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

¹⁰ *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)).

¹¹ Neb. Rev. Stat. § 77-5018(1) (Cum. Supp. 2022).

¹² *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).

valuation.¹³ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹⁴

20. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to its condition.
21. 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. The County Assessor used this information to determine the value attributed to each of the commercial properties in the area, including the Subject Property. The County Board also presented CoStar commercial property reports for the Subject Property and another storage warehouse property located near the Subject Property.
22. The Taxpayer discussed the condition of the Subject Property including the single overhead door and water intrusion on the east side of the building during rainstorms. The Taxpayer presented photographs of rust or some other type of hard water mineral collection from water intrusion as well as some cracks in the internal concrete floor.
23. The County Appraiser discussed the Subject Property indicating that the roof and ceiling height as well as heating and cooling systems were indicative of a property of average quality of construction and that the condition was in line with other properties of average condition.
24. The Taxpayer has not shown that the County Assessor's determination of average quality of construction or average condition for the Subject Property was unreasonable or arbitrary.
25. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to its location adjacent to a run

¹³ *Affiliated Foods Coop.*, 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).

¹⁴ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

- down and poorly maintained property as well as the proximity of railroad tracks across the street from the Subject Property.
26. The Taxpayer did not present information that would allow the Commission to quantify the impact of the neighboring property or the railroad tracks on the Subject Property or any other storage warehouse parcel.
27. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
28. The Taxpayer presented a list showing the address, square footage, condition, assessed value and other information and notes for six properties and requested an assessed value for the Subject Property based on the average per square foot value of these properties.
29. The Taxpayer did not present the PRF for the properties on the list of properties. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property.¹⁵
30. The Taxpayer presented information from the County Assessor's website regarding four of the six properties on the Taxpayer's list. This information presented by the Taxpayer shows that these four properties are of a lower quality of construction than the Subject Property. The Commission finds that the four properties of fair quality of construction are not comparable to the Subject Property.
31. A determination of actual value may be made by using professionally accepted mass appraisal methods.¹⁶ The methods expressly stated in statute are the sales comparison approach,

¹⁵ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on December 7, 2023, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page **is not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

¹⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

the income approach, and the cost approach.¹⁷ The Taxpayer's opinion of 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.¹⁸ The Commission finds the average assessed value does not constitute competent evidence and gives it little weight.

32. The County Board presented the PRF for the remaining two properties listed on the Taxpayer's list of comparable properties and the PRF for a storage warehouse that recently sold.
33. The County Appraiser discussed the market for storage warehouses throughout the County as well as the sales of storage warehouse properties that occurred in far Western Douglas County where the Subject Property is located.
34. The three properties presented by the County Board are all storage warehouses with average quality of construction and average condition ratings.
35. The PRF of these three properties and the PRF for the Subject Property show that all four properties are valued using the same income valuation model.
36. The Commission finds that the Subject Property is valued uniformly and proportionally with other comparable properties.
37. The Taxpayer has not shown that the assessed value of the Subject Property is not equalized with other comparable properties.
38. 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.
39. The Taxpayer has not 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 affirmed.

¹⁷ *Id.*.

¹⁸ See, e.g., Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

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 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$ 33,800
<u>Improvements</u>	<u>\$417,500</u>
Total	\$451,300

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 (Reissue 2018).
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 2023.
7. This Decision and Order is effective on December 16, 2025.

Signed and Sealed: December 16, 2025



Steven A. Keetle, Commissioner