

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

DAVID L. DAVIS LLC
APPELLANT,

CASE NOS: 23C 1419, 24C
1400

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is a vacant residential parcel in Douglas County, property ID number 0626020000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$631,800 in both tax years 2023 and 2024.
3. David L. Davis LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$631,800 for tax year 2023 and \$631,800 for tax year 2024.
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 March 3, 2025, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. John Bredemeyer and James F. Cann were present at the hearing for the Taxpayer.
8. Keith Nielsen (County Assessor) 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.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

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.

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.

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

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

¹² Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹³ *Id.*

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Taxpayer brought these appeals alleging the taxable values for tax years 2023 and 2024 were not equalized with other comparable parcels.
18. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”¹⁶
19. “If a taxpayer's property is assessed at a value in excess of its actual value, or in excess of that value at which others are taxed, then the taxpayer has a right to relief.”¹⁷
20. “[W]hile absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity.”¹⁸ “Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.”¹⁹ The constitutional requirement of uniformity “extends to both rate and valuation.”²⁰
21. “When property owners contend their property has been disproportionately valued as compared to other comparable property, such contention must be sustained by evidence that the valuation is arbitrary or capricious, or so wholly out of line with actual values as to give rise to an inference that the assessor and county board of equalization have not properly discharged their duties. Mere errors of judgment do not sustain a claim of discrimination. There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²¹

¹⁶ Neb. Const. art. VIII, § 1(1).

¹⁷ *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (citing *AT&T Information Sys. v. State Bd. of Equal.*, 237 Neb. 591, 467 N.W.2d 55 (1991); then citing *Zabawa v. Douglas Cty Bd. of Equal.*, 17 Neb. App. 221, 757 N.W.2d 522 (2008)).

¹⁸ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Moser*, 312 Neb. 757, 980 N.W.2d 611 (Syllabus by the Court).

22. The Taxpayer provided two appraisal reports for the Subject Property with effective dates of January 1, 2023 (the 2023 Appraisal Report), and January 1, 2024 (the 2024 Appraisal Report), respectively. The appraisal reports were created by John Bredemeyer (Mr. Bredemeyer), a certified general appraiser in Nebraska. The Taxpayer also provided the property record files (PRFs) for the Subject Property and for six other properties (Taxpayer's Comparables) which it asserts are comparable to the Subject Property.
23. "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."²²
24. A determination of actual value may be made by using professionally accepted mass appraisal methods, including the sales comparison approach.²³
25. "The sales comparison approach estimates the value of a subject property by analyzing the sales prices of similar properties."²⁴
26. Mr. Bredemeyer certified in each appraisal report that the appraisals were performed according to Uniform Standards of Professional Appraisal Practice. However, the Appraisal Reports also contain disclaimers that they are not to determine market value, but to give Mr. Bredemeyer's "opinion of equalized value."
27. In analyzing the "equalized value," Mr. Bredemeyer compared the Subject Property to four parcels (Taxpayer's Comparables 1 through 4) in the 2023 Appraisal Report. In the 2024 Appraisal Report, Mr. Bredemeyer added two additional parcels (Taxpayer's Comparables 5 and 6) as comparables.
28. In both reports, Mr. Bredemeyer determined "The sales comparison approach is appropriate and necessary for credible

²² *Lincoln Cty. Bd. of Equalization v. W. Tabor Ranch Apartments, LLC*, 314 Neb. 582, 595, 991 N.W.2d 889 (2023) (citing *JQH La Vista Conf. Ctr. v. Sarpy Cty. Bd. of Equal.*, 285 Neb. 120, 825 N.W.2d 447 (2013)).

²³ See Neb. Rev. Stat. § 77-112 (Reissue 2018).

²⁴ International Association of Assessing Officials, Standard on Mass Appraisal of Real Property § 4.3 (January 2008).

results.”²⁵ Mr. Bredemeyer then states in each of the Appraisal Reports that “Because the purpose of the appraisal is to form an opinion of the Equalized Value of the subject property, the Assessed Value of the comparable properties will be used, not the sale price.”²⁶

29. Mr. Bredemeyer’s “opinion of equalized value” for both tax years was determined by substituting assessed values for sales prices, then analyzing the relative values. Mr. Bredemeyer analyzed no sales data.
30. “Comparable sales are *recent sales* of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”²⁷
31. Mr. Bredemeyer’s Appraisal Reports demonstrate the appraisals were not performed using professionally approved methods of mass appraisal despite his certification that the appraisals were performed according to Uniform Standards of Professional Appraisal Practice.
32. Further, in comparing the Subject Property to the Taxpayer’s Comparables, Mr. Bredemeyer makes no adjustments to the land values to then draw his conclusion of “equalized value.”
33. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”²⁸
34. Mr. Bredemeyer’s method of analyzing “equalized value” is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method, beyond Mr. Bredemeyer’s own statements in the Appraisal Reports, has

²⁵ Appraisal Report of John Bredemeyer (effective date January 1, 2023) at p. 10; Appraisal Report of John Bredemeyer (effective date January 1, 2024) at p. 10.

²⁶ 2023 Appraisal Report at 10; 2024 Appraisal Report at 10.

²⁷ Neb. Rev. Stat. § 77-1371 (Reissue 2018) (emphasis added).

²⁸ Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

been produced. Therefore, the Commission finds it does not constitute competent evidence.

35. However, the Taxpayer also provided the PRFs for the Subject Property and all six of the Taxpayer's Comparables. Specifically, the Taxpayer provided PRFs for Taxpayer's Comparables 1 through 4 from both tax years 2023 and 2024, and for Taxpayer's Comparables 5 and 6 from tax year 2024.
36. The Subject Property is an unimproved 8.43-acre (or 367,900 square-foot) parcel located at 7225 Fort Street in Omaha, Nebraska. The Subject Property was assessed at \$631,800 for both tax years 2023 and 2024. This equates to a price per acre of \$74,946.62 and a price per square foot of \$1.72 in both tax years.
37. The PRF for the Subject Property also contains the County Assessor's notes of certain adjustments made, including a "-65%" size adjustment, a "-20%" topography adjustment, and a "50%" multiple regression analysis adjustment.
38. Taxpayer's Comparable 1 is an 18.31-acre, or 797,583-square-foot, parcel located at 5415 North 72nd Street in Omaha, Nebraska, directly to the northeast of the Subject Property across 72nd Street. The PRF indicates that, in tax year 2023, Taxpayer's Comparable 1 was assessed at \$486,500. This equates to a price per acre of \$26,570 and a price per square foot of \$0.61 in tax year 2023.
39. In tax year 2024, Taxpayer's Comparable 1 was given a special valuation as agricultural property, and thus it can only be comparable to the Subject Property for tax year 2023.
40. Taxpayer's Comparable 2 is a 1.26 acre, or 55,183, parcel located at 3802 North 72nd Street in Omaha, Nebraska, a few blocks south of the Subject Property. Taxpayer's Comparable 2 was valued at \$26,500 in both the 2023 and 2024 tax years. This is a price per acre of \$21,032, or \$0.48 per square foot.
41. Taxpayer's Comparable 3 is an 18.6 acre, or 810,216 square-foot, improved commercial parcel located at 5400 North 72 Street in Omaha, Nebraska. Taxpayer's Comparable 3 is directly adjacent

to the Subject Property along its northern boundary. For both tax years 2023 and 2024, Taxpayer's Comparable 3 was valued at \$812,200. This is \$43,666 per acre or \$1.00 per square foot. Although there are improvements on Taxpayer's Comparable 3, including a radio tower, no value was assigned to improvements by the County Assessor.²⁹

42. Taxpayer's Comparable 4 is a 0.6813 acre, or 29,679 square foot, parcel directly adjacent to Taxpayer's Comparable 2 on its southern boundary. This property was assessed at \$23,900 for both 2023 and 2024. The price per acre is \$35,080 and the price per square foot is \$0.81.
43. Taxpayer's Comparable 5 is a 1.7841-acre (or 77,716 square-foot) property located at 4912 N 90th Street in Omaha, Nebraska. Taxpayer's Comparable 5 was assessed at \$29,000 for both tax years 2023 and 2024. This equals \$16,254.69 per acre or \$0.37 per square foot.
44. Finally, Taxpayer's Comparable 6 is a 3.631221-acre (or 158,176-square-foot) parcel located at 16801 Pine Street in Omaha, Nebraska. The 2024 tax valuation was \$52,500. That equals \$14,458 per acre or \$0.33 per square foot.
45. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.³⁰
46. Both Taxpayer's Comparables 5 and 6 are unimproved parcels in residential neighborhoods located in different areas than the Subject Property. The Subject Property is in a commercial use area. Therefore, Taxpayer's Comparables 5 and 6 are not sufficiently comparable to the Subject Property to make a determination.
47. The County Assessor also presented PRFs for five additional properties, two as "sales comparables" and three as

²⁹ It should be noted that assigning no value to improvements is incorrect. However, it does not change the analysis here as only the relative assessed land values are at issue.

³⁰ International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

“equalization comparables.” The sales comparables were offered to show that the Subject Property’s assessed values are low by comparison. However, the sale prices per acre or per square foot are not the issue that the Taxpayer raised in these appeals. The Taxpayer asserted that the *assessed values* are disproportionate. Thus, for the County Board’s sales comparables, only the assessed values will be considered.

48. The County Board’s first sales comparable is an improved commercial property located at 445 S 193rd Street in Omaha, Nebraska (Sales Comparable 1). The land within Sales Comparable 1 is 8.226 acres (or 358,324.56 square feet) and was assessed at \$1,444,700 in tax years 2023 and 2024. This equals \$175,626 per acre or \$4.03 per square foot.
49. The County Board’s second sales comparable is also an improved commercial parcel and is located at 13033 Pierce Street in Omaha, Nebraska (Sales Comparable 2). The land within Sales Comparable 2 is 9.52 acres (or 414,691.20 square feet) and was valued at \$1,932,700 in tax year 2023 and \$3,317,500 in tax year 2024. This equals \$203,014.71 per acre or \$4.66 per square foot in 2023 and \$348,476.89 per acre or \$8.00 per square foot in 2024.
50. However, Sales Comparables 1 and 2 are also in different areas than the Subject Property and, thus, are not particularly comparable.
51. The County Board’s next comparable is a property located at 6221 N 72nd Street in Omaha, Nebraska (Equalization Comparable 1). Equalization Comparable 1 is a 2.253-acre 98,140.68-square-foot, parcel which was assessed at \$278,000 in both 2023 and 2024. This equals a value acre of \$123,391.03, or \$2.83 per square foot. The 2024 PRF for Equalization Comparable 1 also contains a note dated February 28, 2025, that “In 2023 and 2024, attributes were associated with this parcel of +50% good loc [sic], -35% steep slope, -45% irreg [sic] shape[.]” Another note in the PRF for Equalization Comparable 1 dated

August 8, 2024, indicates part of that property was wooded and sloped.

52. The PRF for the Subject Property submitted by the County Board contains a note dated February 28, 2023, stating “MRA value with a 50% MRA adjustment for slope/power line easements”. The PRF for the Subject Property submitted by the County Board also contains valuation change history noting the Subject Property’s valuation was set for tax year 2023 on March 14, 2023.
53. Equalization Comparable 2 is a 6.31-acre, or 274,863-square foot, parcel located at 5615 N 72nd Street in Omaha, Nebraska. Equalization Comparable 2 is directly adjacent to Taxpayer’s Comparable 1 and lies to the northeast of the Subject Property. In 2023, Equalization Comparable 2 was assessed at \$621,500. This equals \$98,494.45 per acre, or \$2.26. Notably, the satellite images in the PRFs provided by the County Board show that Taxpayer’s Comparable 1 and Equalization Comparable 2 are similar in topography and use. Again, Taxpayer’s Comparable 1 was assessed at \$0.61 per square foot in 2023. Finally, there is a note in the 2024 PRF for Equalization Comparable 2 dated February 28, 2023, stating there was an MRA adjustment for the slope of 65%.
54. The County Board’s final comparable is an improved commercial parcel located at 5600 N 72nd Street in Omaha, Nebraska (Equalization Comparable 3), lying directly adjacent and to the north of Taxpayer’s Comparable 3. Taxpayer’s Comparable 3, again, is directly adjacent to the north of the Subject Property. Equalization Comparable 3 is 22.26 acres, or 969,646 square feet.
55. The 2023 and 2024 land valuations (ignoring improvements) for Equalization Comparable 3 were \$965,600. This equals \$43,378.24 per acre, or approximately \$1.00 per square foot, very similar to Taxpayer’s Comparable 3 at \$43,666 per acre or \$1.00 per square foot.

56. The PRFs for the comparables which are located along N 72nd Street in Omaha (including the Subject Property) show dramatic differences in valuations and various adjustments to those valuations over time. The Commission can see no rhyme or reason underlying the different percentage adjustments.
57. For example, the notes in the 2024 PRFs for the County Board's Equalization Comparable 1 and for the Subject Property suggest that the Subject Property was given a 50% valuation increase upon multiple regression analysis, in part, "for slope" while Equalization Comparable 1 was reduced 35% for slope.
58. "A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion."³¹
59. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."³²
60. To increase the value of one property due to a given feature and reduce the value of another property for the same feature is arbitrary by definition.
61. Although "absolute uniformity of approach for taxation may not be possible, there must be a reasonable attempt at uniformity. The object of the uniformity clause is accomplished 'if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.' No difference in the method of determining the valuation or rate of tax to be imposed can be allowed unless 'separate classifications rest on some reason of public policy or some substantial difference of situation or circumstance that would naturally suggest justice or expediency

³¹ *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 462, 640 N.W.2d 398, 405 (2002).

³² *Scribante v. Douglas Cty. Bd. of Equalization*, 8 Neb. App. 25, 39, 588 N.W.2d 190, 199 (1999).

- of diverse legislation with respect to the objects classified.”³³
62. Although different properties may have different valuations and different adjustments to those valuations for different features, there must be some basis for those adjustments which is consistently applied. The wildly different valuations and inconsistent adjustments demonstrate there has been no reasonable attempt at uniformity among the properties presented lying along N 72nd Street in Omaha.
63. On these facts, the Taxpayer has provided competent evidence to rebut the presumption that the County Board faithfully performed its duties in making an assessment and acted upon sufficient competent evidence to justify its action.
64. The Commission finds the most comparable properties in the area presented to the Commission are Taxpayer’s Comparable 3 and Equalization Comparable 3 as they are the most similarly situated properties along N 72nd Street in Omaha, Nebraska, and share the same highest and best use as commercial properties.
65. As such, the Subject Property should be equalized with these two properties at \$1.00 per square foot, or \$367,900 overall, for both tax years 2023 and 2024.
66. 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.
67. 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.

³³ *Moser*, 312 Neb. at 769-70, 980 N.W.2d at 621 (quoting *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000)).

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 2023 and 2024 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2023 and 2024 is:

Total	\$367,900
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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.
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 2023 and 2024.
7. This Decision and Order is effective on May 6, 2026.

SIGNED AND SEALED: May 6, 2026.

SEAL



James D. Kuhn, Commissioner