BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

DAVID P. BRUNO, APPELLANT, V. LANCASTER COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 23R 0189 DECISION AND ORDER AFFIRMING THE DECISION OF THE LANCASTER COUNTY BOARD OF EQUALIZATION

For the Appellant:
David P. Bruno,
Pro se

For the Appellee:
Daniel J. Zig
Deputy Lancaster County Attorney

This appeal was heard before Commissioners Keetle and Russell.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel located in Lancaster County, Nebraska. The property ID number is found in the Commission's case file.[1]

II. PROCEDURAL HISTORY

The Lancaster County Assessor determined that the assessed value of the Subject Property was $273,900 for tax year 2023. David P. Bruno (the Taxpayer) protested this assessment to the Lancaster County Board of Equalization (the County Board). The County Board determined that the taxable value of the Subject Property for tax year 2023 was $276,900.[2]

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[1] Case file (*see* the Taxpayer's appeal form).
[2] Exhibit 1.

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on October 1, 2024. The Taxpayer did not exchange exhibits with the County Board prior to the hearing as ordered by the Commission. The parties stipulated to the receipt of the decision of the County Board, marked as Exhibit 1. The Taxpayer offered Exhibit 3 into evidence and County Board objected for failure to timely disclose Exhibit 3. Exhibit 3 was not admitted into evidence. No other exhibits were offered into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[3] When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.[4] 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.[5] 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.[6]

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.[7] The burden

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[3] See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

[4] *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)).

[5] *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).

[6] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

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

of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[8]

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.[9] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[10]

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[11] 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.[12]

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.[13] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[14] 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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[8] *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.
[9] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[10] *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).
[11] 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).
[12] *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)).
[13] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[14] *Id.*

evaluation of the evidence presented to it.[15] The Commission's Decision and Order shall include findings of fact and conclusions of law.[16]

IV. RELEVANT LAW

Under Nebraska law,

> Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.[17]

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.[18] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[19] Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.[20] All real property in Nebraska subject to taxation shall be assessed as of January 1.[21] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[22]

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[15] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[16] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[17] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[18] *Id.* (citing Neb. Rev. Stat. § 77-1371).
[19] *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.
[20] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[21] See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).
[22] Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2022).

"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 the Nebraska Constitution.[23] "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value."[24] The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.[25] Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.[26] 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.[27] If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.[28] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[29]

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[23] Neb. Const., art. VIII, § 1.

[24] *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

[25] *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).

[26] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

[27] *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

[28] *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.2d at 6 (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

[29] *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

At the hearing, the Taxpayer made his opening statement, then offered Exhibit 3 into evidence. The County Board objected to Exhibit 3 on the grounds that it was not timely disclosed by the Taxpayer and hearsay. The Commission explained on the record that the applicable Order for Hearing and Notice of Hearing (hereinafter, the "Order") required the parties to exchange exhibits thirty days prior to the hearing date.[30] The Taxpayer argued the Order did not expressly provide that he was required to send his exhibits to the County Attorney and that he did send his exhibits to the Commission. The precise language of the Order regarding the exchange of primary exhibits is as follows:

> At least 30 days before the date of the hearing, each party shall:
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> a. Deliver one complete, legible copy of all documentary or photographic evidence to each other party and make any other physical evidence available for inspection; [and]
>
> b. Deliver the original and two complete, legible copies of all documentary or photographic evidence to the Commission[.][31]

An Affidavit of Service in the records of the Commission establishes that the Order was served on all parties.[32]

The Commission upheld the objection of the County Board to Exhibit 3. When the Commission attempted to explain the ruling to the Taxpayer, the Taxpayer continued to argue and interrupted the Commission several times. The Taxpayer suggested rescheduling the

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[30] See Case file (Order Vacating Single Commissioner Decision and Order for Hearing and Notice of Hearing ¶ 8, dated July 22, 2024).
[31] *Id.*
[32] See Case File.

hearing to give the County Board time to review the exhibits. When the Commission denied the request to continue the hearing, the Taxpayer left the hearing and did not return. The County Board moved to dismiss the appeal for the Taxpayer's failure to present his case.

B. Analysis

"In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal."[33] "Each party shall deliver to each opposing party one complete and legible copy of all documentary and photographic exhibits that the party intends to offer at the hearing."[34] "Exhibits which have not been delivered as required by this rule within the time provided for in an Order for Hearing will not be received at the hearing in the absence of good cause shown or by agreement of the parties."[35]

Here, the parties were ordered by the Commission to exchange primary evidence thirty days prior to the date of the hearing pursuant to Title 442 Neb. Admin. Code ch 5, § 020.10. The Taxpayer did not provide his exhibits to the County Board within that time. The Taxpayer did not show any good cause as to why Exhibit 3 should be received by the Commission, and the County Board did not agree to receipt of Exhibit 3. By rule, the Commission was therefore required to uphold the County Board's objection.[36] Because the Taxpayer did not offer any further evidence or testimony, the Taxpayer has presented no evidence to show the County Board's decision was incorrect and the Commission must deny the appeal.[37]

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[33] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[34] Title 442 Neb. Admin. Code ch 5, § 020.10A.
[35] Title 442 Neb. Admin. Code ch 5, § 020.10D.
[36] *Id.* See also *MLB Advanced Media, L.P. v. Neb. Dep't of Revenue*, 321 Neb. 515, 534, 36 N.W.3rd 165 (2026) (citing *Becton, Dickinson & Co. v. Nebraska Dept. of Rev.*, 276 Neb. 640, 756 N.W.2d 280 (2008) ("Agency regulations properly adopted and filed with the Secretary of State of Nebraska have the effect of statutory law.").
[37] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

VI. CONCLUSION

The Commission finds that there is no competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Lancaster County Board of Equalization determining the value of the Subject Property for tax year 2023 is affirmed.
2. The assessed value of the Subject Property for tax year 2023 is:

Total	**$276,900**

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2023.

7. This Decision and Order is effective for purposes of appeal on August 5, 2026.[38]

SIGNED AND SEALED: August 5, 2026.

SEAL

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Steven A. Keetle, Commissioner

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Jackie S. Russell, Commissioner

[38] Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.