BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

SARAH MICHELSON APPELLANT, V. DOUGLAS COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 23R 0364 DECISION AND ORDER AFFIRMING THE DECISION OF THE DOUGLAS COUNTY BOARD OF EQUALIZATION *Nunc Pro Tunc*

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 2203091062.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at $448,600 for tax year 2023.
3. Sarah Michelson (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 $448,600 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 February 4, 2025, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Sarah Michelson was present at the hearing for the Taxpayer.
8. Michael Lunkwitz (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

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[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]

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[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. § 77-5016(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 this appeal challenging the County Board's decision, arguing the County Board used non-comparable properties to value the Subject Property, that her valuation was not equalized with other homes in the neighborhood, and that the County Assessor used incorrect information related to the Subject Property, and that the Subject Property was not equalized with other properties in the neighborhood.
18. The threshold question is whether the Taxpayer has rebutted the initial presumption by competent evidence.[16] This question "may often be informed by considering whether the taxpayer has presented evidence that would call into question whether the valuation adopted by the Board is reasonable."[17] "That is, evidence tending to show that the valuation is questionable can serve toward rebutting the presumption that the Board faithfully performed its duties."[18]
19. The Taxpayer provided several Property Record Files (PRFs) for both the Subject Property and several properties the Taxpayer asserts either are or are not comparable to the Subject Property, depending on the details. Some of the properties in the Taxpayer's provided PRFs do appear to be assessed lower than the Subject Property despite being of similar age, quality, condition, and having similar features.
20. The Taxpayer also stated at the hearing that the Subject Property's basement was unfinished. The PRF for the Subject Property lists the basement as 1,824 square feet, 1,350 of that being finished.
21. "A resident owner who is familiar with his or her property and knows its worth is permitted to testify as to its value without

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[16] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.
[17] *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 943, 911 N.W.2d 551, 558–59 (2018).
[18] *Id.*, 299 Neb. at 943, 911 N.W.2d at 559.

further foundation; this principle rests upon the owner's familiarity with the property's characteristics, its actual and potential uses, and the owner's experience in dealing with it."[19]

22. Determining taxable value requires an accurate description of the Subject Property's characteristics including quality of construction, style, age, size, amenities, functional utility, and condition.[20]
23. Based on some of the PRFs provided by the Taxpayer and her statement the Subject Property's basement is unfinished, the Taxpayer has adduced sufficient evidence to rebut the initial presumption. Thus, the question before the Commission is whether the Taxpayer has met the second burden of proof by clear and convincing evidence.
24. The Taxpayer first asserts several of the properties in the Subject Property's neighborhood used by the County Assessor to value the Subject Property for tax year 2023 are not valid comparisons to the Subject Property. As the Taxpayer correctly points out, several neighborhood properties are not valid comparables to the Subject Property because the Subject Property is a ranch-style home and several of the neighborhood sale properties are two-story homes. The PRFs provided by the Taxpayer demonstrate the 2023 valuations of the Subject Property and the Taxpayer's comparables were calculated under the cost approach, not the comparable sales approach. The cost approach is a valid method of valuation for tax purposes.[21] Those properties which are not ranch-style homes thus have no bearing on the 2023 valuation of the Subject Property and the Taxpayer's comparable sales argument is entitled to little weight.
25. Regarding whether the County Assessor used correct

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[19] *Cain v. Custer Cty. Bd. of Equalization*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018) (citing *Darnall Ranch v. Banner Cty. Bd. of Equal.*, 276 Neb. 296, 753 N.W.2d 819 (2008), then citing *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 753 N.W.2d 802 (2008)).
[20] International Association of Assessing Officers, *Property Assessment Valuation* 204-05 (3rd ed. 2010).
[21] Neb. Rev. Stat. § 77-112 (Reissue 2018).

information in assessing the Subject Property, the Taxpayer has not clearly and convincingly shown the County Board was arbitrary or unreasonable in deciding the assessment information is correct.

26. The Taxpayer said the Subject Property's basement is unfinished at the hearing. However, she also said there is some amount of drywall, carpet, and ceiling in the basement. The Taxpayer did not provide any evidence as to how much of the basement was or was not finished as of the assessment date.
27. Finally, the Taxpayer asserts that the Subject Property is excessively valued compared to other comparable properties in the neighborhood.
28. "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."[22]
29. The Taxpayer produced PRFs for three properties in the same neighborhood and with similar ages, quality, condition, and features. These are the Taxpayer's first three comparables.
30. The remainder of the Taxpayer's PRFs are for properties with different construction styles and therefore do not compare to the Subject Property. The Taxpayer frequently acknowledges in her notes submitted with the PRFs that the latter properties do not compare to the Subject Property but asserts that these two-story homes or multi-level homes are larger, have more bedrooms, more square footage, and other features, but are still assessed at lower value or only slightly higher values than the Subject Property.
31. "[T]he size of the residence will influence its cost per square foot. A small residence will have a higher cost than a large one of the same quality."[23] The type of residence influences its cost per square foot. For example, the base cost to construct a one story,

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[22] *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)).
[23] Marshall & Swift, *Residential Cost Handbook* 7 (Dec. 2021).

average quality, 2,000 square-foot residence is higher than the cost to construct a two story, average quality, 2,000 square foot residence.[24]

32. Because the latter properties are different styles of homes than the Subject Property, they do not provide a sound basis for comparison.
33. The Taxpayer also notes that several of the lots in her offered PRFs are larger than the Subject Property lot. The differences in lot sizes are accounted for in the PRFs offered, and nothing suggests any of the submitted properties were arbitrarily or unreasonably valued based on lot size.
34. The Subject Property and the Taxpayer's first three comparables must be examined one by one to determine if the Subject Property is excessively valued. It must also be noted here that the cost data for the Subject Property and the Taxpayer's first three comparables were retrieved by the County Assessor from the Marshall and Swift Cost Manual.
35. The Subject Property is a 1,949-square-foot, ranch-style home built in 2005. In tax year 2023, the Subject Property was valued at $448,600, had a quality rating of "Good," and a condition rating of "Average." The "base value" per square foot (before adjustments for "add-ons") in the County Assessor's cost analysis was $158.78. The "add-ons" for the Subject Property include an 1,824 square-foot basement with 1,350 square feet finished, adding $129,620 in total replacement costs new.
36. The Taxpayer's first comparable property is a 1,684 square-foot residence located at 19504 Cedar Ave in Omaha, Nebraska built in 2007, with a 2023 assessed value of $435,300, a quality rating of "Good," and a condition rating of "Good." The base value was $162.91 per square foot in tax year 2023. 19504 Cedar Ave has a slightly smaller basement at 1,684 square feet with 1,204 square feet being finished.

[24] Compare, *e.g.*, Marshall & Swift, *Residential Cost Handbook* Avg-19 with *id.* at Avg-21.

37. Although 19504 Cedar Ave is assessed at a slightly lower value than the Subject Property despite being in better condition, it is apparent from the PRFs that this difference is primarily a result of the differences in square footage. The Subject Property has more overall square footage and more basement square footage (both finished and unfinished) than 19504 Cedar Ave.
38. The Taxpayer's second comparable property is a 1,912 square-foot residence located at 19510 Cedar Circle in Omaha, Nebraska built in 2011, with a 2023 assessed value of $397,900, a quality rating of "Good," and a condition rating of "Average." The base value was $154.55 per square foot in tax year 2023.
39. The Taxpayer asserted 19510 Cedar Circle has features, including a finished basement, which make it more valuable than the Subject Property, but has a $51,900 lower improvement value than the Subject Property. The PRF for 19510 Cedar Circle indicates there was an unfinished basement as of January 1, 2023, the assessment date. Even assuming the Taxpayer is correct that the basement is finished, the PRF shows the permits for finishing the basement were applied for in November 2024. The Taxpayer presented no evidence that the basement of 19510 Cedar Circle was finished as of the assessment date.
40. The Taxpayer observed that 19510 Cedar Circle, despite being six years newer and having the same quality and condition, was given a lower base value per square foot than the Subject Property in 2023. However, 19510 Cedar Circle has two bathrooms while the Subject Property has three. 19510 Cedar Circle also has frame siding compared to the Subject Property's hardboard siding. Both of these increase costs to build.
41. The Taxpayer's third comparable is 1,648 square-foot residence located at 19511 Cedar Circle in Omaha, Nebraska built in 2005, with a 2023 assessed value of $433,200, a quality rating of "Good," and a condition rating of "Average." The base value was $168.59 per square foot in tax year 2023.

42. 19511 Cedar Circle was built the same year as the Subject Property, has the same quality and condition ratings, but is about 300 square feet smaller and has an approximately $10 higher base value per square foot.
43. The Taxpayer asserts 19511 Cedar Circle has more bedrooms than the Subject Property. The PRFs show they are both three-bedroom, three-bathroom homes. The Taxpayer also asserts 19511 Cedar Circle has three times the amount of brick on the exterior, a fenced yard, and other features which make 19511 Cedar Circle more valuable than the Subject Property, yet 19511 Cedar Circle is assessed lower than the Subject Property. However, these differences are accounted for in the PRFs and nothing put forward by the Taxpayer suggests they were not accurately accounted for.
44. 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.
45. However, 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.

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	$ 45,000
Improvements	$403,600
Total	$448,600

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 year 2023.
7. This Decision and Order is effective on February 13, 2026.

Signed and Sealed: February 24, 2026.

James D. Kuhn, Commissioner