

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

JAMES SHOEMAKER
APPELLANT,

CASE NO: 23R 0422

V.

FRONTIER COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel on leasehold land in Frontier County, parcel number 320059669.
2. The Frontier County Assessor (the County Assessor) assessed the Subject Property at \$209,174 for tax year 2023.
3. James Shoemaker (the Taxpayer) protested this value to the Frontier County Board of Equalization (the County Board) and requested an assessed value of \$149,092 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$209,174 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 December 20, 2024, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Eric Eisenhart (Taxpayer's Counsel) was present at the hearing for the Taxpayer.
8. Regina Andrijeski 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, ___ 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.

⁷ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___. 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, ___ N.W.3d at ___; *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's Counsel stated the land has no value as it is a Leasehold, and the Taxpayer does not own the land. The Taxpayer's Counsel stated the land lease is very restrictive and offers very limited usage.
18. The Taxpayer's Counsel stated the Subject Property is not usable in the wintertime as it only has a fireplace for heat. Access to the Subject Property is via a two-track trail, not a well-maintained road.
19. The Taxpayer's Counsel stated the location of the Subject Property is not as good as parcels that have sold for higher prices.
20. The Assessor stated she is not valuing the land, just the Leasehold value. The Assessor asserted there were seven sales during the valuation period that led to the increase in Leasehold values for all similar properties. The Assessor stated several high dollar sales had lowered the sales ratio to 70% and needed to be increased to be within 92% to 100% to be in compliance with State Statute.
21. Competent evidence can be "evidence tending to show that the valuation" adopted by a county board of equalization is questionable.¹⁶ In this case, the Assessor provided evidence to support her valuation. The Taxpayer did not provide evidence of the actual value of the Subject Property for tax year 2023.
22. "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 However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property

¹⁶ *Betty L. Green Living Trust v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 942-43, 911 N.W.2d 551, 558-59 (2018).

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)).

is grossly excessive.¹⁸ This burden requires evidence of the assessed and market value for both the Subject Property and a comparable property.

23. 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.
24. 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:

Leasehold	\$70,000
<u>Improvements</u>	<u>\$139,174</u>
Total	\$209,174

3. This Decision and Order, if no further action is taken, shall be certified to the Frontier County Treasurer and the Frontier 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 January 13, 2026.

¹⁸ *Pinnacle Enters.* 320 Neb. at 309–10, ___ N.W.3d ___ (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619).

Signed and Sealed: January 13, 2026



James D. Kuhn, Commissioner