

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

CHAD BRANECKI et al.,
LIVING REVOCABLE TRUST,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 23R 0613

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 0900550108.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$835,200 for tax year 2023.
3. Chad Branecki et al., Living Revocable Trust (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 \$810,200 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 March 29, 2024, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Tara Branecki was present at the hearing for the Taxpayer.
8. Mike Lunkwitz 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.⁶ The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

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.

14. 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.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 *Botdorf 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 Subject Property is a residential parcel improved with a 3,353-square-foot, one-and-one-half story residence constructed in 2008. The Subject Property has a quality rating of very good and a condition rating of average.
18. The Taxpayer alleged that the increase in assessed value from the prior year, particularly as compared to the increase in value of other properties, was unreasonable and arbitrary.
19. 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. This information was used to determine the value attributed to each of the residential properties in the area, including the Subject Property.
20. The PRF shows that the market area in which the Subject Property is located was reassessed for tax year 2023, having been last reassessed for tax year 2020.
21. The notes in the PRF show that the Subject Property has an in-ground pool which was constructed in 2018 but that was discovered by the Assessor's office in 2022 and added to the assessment for the 2023 assessment year.
22. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹⁶
23. The assessed value for real property may be different from year to year according to the circumstances.¹⁷ For this reason, a prior year's assessment is not relevant to the subsequent year's

¹⁶ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

¹⁷ *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.¹⁸ Similarly, prior assessments of other properties are not relevant to the subsequent assessment.¹⁹

24. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
25. The Taxpayer stated that the Subject Property and the property next door to the Subject Property (the Neighbor's Property) were reviewed by different referees and that as a result the adjustments by the County Board were not equalized.
26. The County Appraiser stated that assessed values for properties in Douglas County were determined based on the characteristics of each individual property.
27. The County Board presented the PRF for the Neighbor's Property.
28. The County Appraiser stated that the characteristics of the Subject Property and the Neighbor's Property shown on the PRF's were correct as of the assessment date.
29. The PRF's show that the Subject Property and the Neighbor's property are substantially similar with the Neighbor's Property being slightly smaller and in better condition, having a higher condition rating. This resulted in the Subject Property having a higher overall valuation but a lower per square foot valuation prior to the adjustment by the County Board.
30. The County Appraiser stated that he did not know why the County Board reduced the value of the properties.
31. The Referee's report from the County Board proceedings indicates that the County Board action lowering the value of the Subject Property was done to equalize it with the value of the Neighbor's Property.
32. The County Appraiser stated that after the County Board determination for the Subject Property of \$810,200 for the 2023

¹⁸ *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).

¹⁹ *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

- tax year it was determined that the equalized value of the Subject Property should be \$781,000 for tax year 2023.
33. The County Appraiser stated that in his opinion the equalized assessed value of the Subject Property for tax year 2023 was \$781,000.
 34. If the \$781,000 value were adopted for the Subject Property it would have the same per square foot valuation as the Neighbor's Property even though the Subject Property is larger and has a lower condition rating than the Neighbor's Property.
 35. The assessed value of the Neighbor's Property was reduced to 90.25% of its market value by the County Board.
 36. The assessed value of the Subject Property was reduced to 97% of its market value by the County Board.
 37. In *Zabawa v. Douglas County Board of Equalization*, the Nebraska Court of Appeals held that "By adjudicating tax protests in greatly disparate amounts—676 Dillon Drive at 75.8 percent of its market value and Zabawa's comparable property at full market value—the Board failed to fulfill its 'plain duty' to equalize property valuations. Zabawa rebutted the presumption that the Board's decision was correct." The Court determined that the remedy was to reduce the assessed valuation of Zabawa's property to the same percentage of value as that of the comparable property.²⁰
 38. The assessment proposed by the County Appraiser of \$781,000 would result in an assessment that is 93.51% of its market value, closer to the 90.25% value of the Neighbor's Property but not the same percentage of value.
 39. The Commission finds that the equalized assessed value of the Subject Property is \$753,800 or 90.25% of its market value prior to County Board action.

²⁰ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb. App. 221, 228, 757 N.W.2d 522, 528 (2008).

40. 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.
41. The Taxpayer has 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 vacated.

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

Total	\$753,800
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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 year 2023.
7. This Decision and Order is effective on April 3, 2026.

SIGNED AND SEALED: April 3, 2026.

SEAL



Steven A. Keetle, Commissioner