

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

PATRICK KENNY,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 23R 1012

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 1622790000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$185,700 for tax year 2023.
3. Patrick Kenny (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 \$169,300 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 7, 2024, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Patrick G. Kenny was present at the hearing for the Taxpayer.
8. James G. Morris 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, ____ 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.

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, ____ 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 Subject Property is a residential parcel improved with a 1,385-square-foot, one-and-one-half story residence constructed in 1921. The Subject Property has quality and condition ratings of average.
18. The Taxpayer alleged that the assessed value of the Subject Property should be reduced due to the condition of surrounding properties.
19. The Taxpayer presented photographs of views of adjoining properties and discussed their condition.
20. The Taxpayer further alleged that the assessed value of the Subject Property should be reduced due to its lack of off-street parking.
21. 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.
22. The County Appraiser discussed the list of recent sales in the Subject Property's market area. The County Appraiser stated that the issues of run-down properties, lack of off-street parking, as well as the limited on-street parking in the area are factors impacting all properties in the area and their influence on values are reflected in the sales prices paid.
23. The Taxpayer offered no information to further quantify the impact of the condition of surrounding properties or availability of street or off-street parking on the value of the Subject Property.
24. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on recent sales in the area.
25. The Taxpayer presented a table of sales in the area of the

Subject Property that listed the address, approximate sales price, year of sale, parking availability, year built and other information.

26. None of the sales on the Taxpayer's table were on the County Board's list of recent valid sales.
27. The Taxpayer did not present the PRF for the properties presented as comparables. Accordingly, the Commission cannot see the basis for the determination of assessed value for the properties presented by the Taxpayer or compare their characteristics to the characteristics of the Subject Property. The Commission is unable to determine the contribution of the different characteristics of the properties presented by the Taxpayer to the Subject Property.¹⁶
28. The County Appraiser stated that sales may not be considered valid if they were too old, sales between relatives, were foreclosure sales, or were otherwise not arm's length transactions.
29. The County Board did present the PRF for one of the sales on the Taxpayer's table which shows that the sale occurred after the two-year period used by the County for determining values for 2023. and that the sale occurred between two parties with the same name, both reasons that the sale would not be considered when determining assessed values.
30. The Taxpayer alleged that the square footage of finished basement shown on the PRF for the Subject Property is incorrect.
31. The Taxpayer discussed the amount and type of finish including the amount and type of drop ceiling.
32. Based on the information provided by the Taxpayer the County

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on January 4, 2024, includes the following:

NOTE: *Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

Appraiser stated that the Subject Property's amount of basement finish should be 600 square feet and the value reduced to account for this change.

33. The Commission finds that the value of the improvements on the Subject Property, accounting for the change to improved basement square footage, is \$144,800.¹⁷
34. The Commission finds that the assessed value of the Subject Property for tax year 2023 is \$166,300, with \$144,800 attributed to the improvement component and \$21,500 for the land component.
35. 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.
36. 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:

Land	\$ 21,500
<u>Improvements</u>	<u>\$144,800</u>
Total	\$166,300

3. This Decision and Order, if no further action is taken, shall be

¹⁷ 714 sq ft fin – 600 sq ft fin. = 114 sq ft fin x #39.61 psf = \$4,516.
\$4,516 x 39.33% physical depreciation = \$1,776 depreciation.
\$4,516 - \$1,776 = \$2,740 x 1.111 NBHD adj = \$3,044
\$147,800 - \$3,044 = \$144,800 (rounded)

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 January 7, 2026.

Signed and Sealed: January 7, 2026



Steven A. Keetle, Commissioner