

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

FRED E. MCLOUTH
APPELLANT,

CASE NO: 23R 1380

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
VACATING 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 2225570435.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$648,400 for tax year 2023.
3. Fred E. McLouth (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 \$648,400 for tax year 2023.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission) related only to the land value. The Taxpayer does not appeal the improvement value.
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. Christine McLouth and Fred McLouth were present at the hearing for the Taxpayer.
8. Michael Lunkwitz 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 *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 appeals only the land valuation for the Subject Property, arguing it is not equalized with neighboring parcels. The improvement value is not at issue.
18. The Subject Property is a 2.4-acre parcel in Douglas County, Nebraska with a land valuation of \$60,000¹⁶ per acre, or \$144,000 total, in tax year 2023.
19. The Taxpayer provided printed reports from the Douglas County Assessor's website which contain the land valuations for the Subject Property and five neighboring parcels for tax years 2022 and 2023, among others. The Taxpayer also provided an aerial photo showing the Subject Property and all five comparables in relationship to each other. All six properties are contiguous but for roads separating them. Where the Subject Property's land was valued at \$60,000 per acre in 2023, four of the five comparable properties' 2023 land valuations are between approximately \$32,600 and \$36,000 per acre. The Taxpayer's first comparable is a parcel directly north of the Subject Property and has a 2023 land value of \$32,608.70 per acre.
20. The Taxpayer asserted that the land valuation for the Subject Property was lowered on the Subject Property by the referee in his 2022 protest.
21. 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 valuation.¹⁸
22. However, "If a taxpayer's property is assessed at a value in excess of its actual value, or in excess of that value at which

¹⁶ The Property Record File for the Subject Property suggests the value per acre of the Subject Property is \$78,200, or \$144,000 overall. The tax assessment incorporates the \$144,000 overall land value. \$144,000 divided by 2.4 equals \$60,000 per acre.

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).

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).

- others are taxed, then the taxpayer has a right to relief.”¹⁹
23. The Taxpayer also asserted the Subject Property was the only parcel for which the land value was changed in tax year 2023 out of the six properties referenced.
24. Prior assessments of other properties are not relevant to the subsequent assessment of the Subject Property.²⁰ However, where, as here, one parcel’s value was increased such that the increase creates dis-equalization among similarly situated parcels, such increase is evidence “of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.”²¹
25. Further, “A decision is arbitrary when it is made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion.”²²
26. Here, the Subject Property was assessed at nearly double the land valuation of multiple other parcels in the same neighborhood. The Commission can see no material differences between the six parcels to justify values of \$60,000 per acre for two parcels and \$36,000 or less for the adjacent parcels.
27. The County Assessor stated the land values in this neighborhood begin at \$60,000 per acre but did not explain why four neighboring parcels had lower land valuations.
28. The Subject Property’s land value should follow the most comparable property directly to the north at \$32,608.70 per acre.
29. 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.
30. The Taxpayer has adduced clear and convincing evidence that

¹⁹ *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)).

²⁰ *Kohl’s Dep’t Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

²¹ *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.3d at 6 (internal citations omitted).

²² *Bethesda Found. v. Buffalo Cty. Bd. of Equal.*, 263 Neb. 454, 462, 640 N.W.2d 398, 405 (2002).

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	\$ 78,260 ²³
<u>Improvements</u>	<u>\$504,400</u>
Total	\$582,660

- 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 13, 2026.



James D. Kuhn, Commissioner

²³ \$32,608.70 per acre x 2.4 acres and rounded down to the nearest dollar.