

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

ROSE M. NELSON
APPELLANT,

V.

MORRILL COUNTY BOARD
OF EQUALIZATION,
MICHAEL PHILLIPS
APPELLEES.

CASE NO: 24A 0606

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

I. BACKGROUND

1. The Subject Property is an improved agricultural property in Morrill County, parcel number 200037881.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$892,000 for tax year 2024.
3. Michael Phillips (the Taxpayer) protested this value to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$794,660 for tax year 2024.
4. The County Board determined that the taxable value of the Subject Property was \$835,135 for tax year 2024.
5. The County Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on October 2, 2025, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner Jackie S. Russell.
7. Robert Brenner, Attorney, and Rose M. Nelson, County Assessor, were present at the hearing for the Appellant.
8. Kirk Fellhoelter, County Attorney, was present for the County Board.

9. Mike Phillips was present for the Taxpayer.

II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. The Commission's review of a determination of the County Board of Equalization is *de novo*.²
12. When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.³
13. 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
14. 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

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

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cnty. 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 Cnty. 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.

unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

15. 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
16. 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
17. 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

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.

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.*

evaluation of the evidence presented to it.¹⁴ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁵

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

18. The Subject Property is an agricultural feedlot operation with 37.91 acres classified as intensive use feedlot, 12.01 acres classified as irrigated, 41.14 acres classified as dryland, 61.56 acres classified as grassland, one outbuilding acre, two homesite acres, and 5.11 acres attributed to roads and ditches.
19. Ms. Nelson argued that the County Board arbitrarily and unreasonably reduced the Subject Property value without basis creating disequalization amongst feedlot properties.
20. Mr. Phillips argued that Morrill County fails to properly maintain the gravel road used for ingress and egress to the Subject Property which was the basis for his argument to the County Board at the time of his protest. Mr. Phillips stated that road maintenance has been an issue for more than thirty years.
21. Mr. Phillips did not provide any evidence to quantify the effects of the road maintenance issue for the Commission to analyze.
22. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹⁶
23. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷ "Agricultural and horticultural land is valued for taxation purposes at 75 percent of its value, but the starting point for determining taxable value is still actual value."¹⁸

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

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

¹⁷ Neb. Rev. Stat. § 77-201(1)-(3) (Cum. Supp. 2022).

¹⁸ *Betty L. Green Living Tr. v. Morrill Cty. Bd. of Equal.*, 299 Neb. 933, 944, 911 N.W.2d 551, 559 (2018); 350 Neb. Admin. Code, ch. 14, § 002.54 (Mar. 15, 2009).

24. Under § 77-112, actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.¹⁹
25. “[U]nder §§ 77-103.01, 77-112, and 77-1363, assessors are not limited to a single method of determining the actual value of property for tax purposes. Rather, assessors are charged with a duty to consider a wide range of relevant factors in order to arrive at a proper assessment which does not exceed actual value.”²⁰
26. Ms. Nelson stated that there was a revaluation completed of the agricultural land class values for 2024 which included intensive use feedlot values. The increases (or decreases) to each land class in the market study area were dependent upon the property data components and comparable sales within the study period, along with an assessment-to-sales ratio analysis. Assessment actions for 2024 are further detailed in the submitted Reports and Opinions of the Property Tax Administrator (R&O).
27. The R&O details that Stanard Appraisal Services is utilized for assisting with intensive use value application in Morrill County. The contract with Stanard Appraisal Services is approved by the Property Tax Administrator.
28. Agricultural or horticultural land which has been designed for intensive uses such as feedlots, nurseries, vineyards, sod farms, and orchards should be valued in a separate category. A separate land classification for these intensive use areas shall be

¹⁹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845, 906 N.W.2d 285, 295 (2018).

²⁰ *Id.*, 298 Neb. at 853, 906 N.W.2d at 299.

determined. Intensive use areas must be valued independently from rural farm sites. Land not directly associated with buildings in these instances would be assessed at seventy-five (75) percent of value as determined by a market study.²¹

29. Additional supportive materials from Ms. Nelson included an equalization study and Property Record Files (PRFs) of all feedlot parcels discussed at hearing.
30. The PRFs indicate uniformity in the valuation of feedlot acres within Morrill County.
31. The Appellant has produced sufficient competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
32. The Appellant 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 2024 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	\$225,935
<u>Improvements</u>	<u>\$666,065</u>
Total	\$892,000

3. This Decision and Order, if no further action is taken, shall be certified to the Morrill County Treasurer and the Morrill County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.

²¹ Title 350 Neb. Admin. Code ch 14,§ 004.04F.

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 2024.
7. This Decision and Order is effective on January 16, 2026.

Signed and Sealed: January 16, 2026



Jackie S. Russell, Commissioner