

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

ROSE M NELSON  
APPELLANT,

V.

MORRILL COUNTY BOARD  
OF EQUALIZATION, JAMES  
D. NEIN,  
APPELLEES.

CASE NO: 24A 0607

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

**I. BACKGROUND**

1. The Subject Property is an improved agricultural parcel in Morrill County, parcel number 200117354.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$141,725 for tax year 2024.
3. James D. Nein (the Taxpayer) protested this value to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$110,065 for tax year 2024.
4. The County Board determined that the taxable value of the Subject Property was \$125,945 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. The Taxpayer was not present at the hearing.

## II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of a determination of the County Board of Equalization is *de novo*.<sup>2</sup>
12. When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.<sup>3</sup>
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.<sup>4</sup> 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.<sup>5</sup>
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.<sup>6</sup> The burden of showing such valuation to be

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

<sup>2</sup> 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).

<sup>3</sup> *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)).

<sup>4</sup> *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).

<sup>5</sup> *Pinnacle Enters.*, 320 Neb. at 309, \_\_\_ N.W.3d at \_\_\_.

<sup>6</sup> *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.<sup>7</sup>

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.<sup>8</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>9</sup>
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.<sup>10</sup> 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.<sup>11</sup>
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.<sup>12</sup> The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.<sup>13</sup> 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

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<sup>7</sup> *Pinnacle Enters.*, 320 Neb. at 309, \_\_\_ N.W.3d at \_\_\_. See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

<sup>8</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>9</sup> *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).

<sup>10</sup> 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).

<sup>11</sup> *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)).

<sup>12</sup> Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

<sup>13</sup> *Id.*

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

### **III. FINDINGS OF FACT & CONCLUSIONS OF LAW**

18. The Subject Property is a one-story, single-family home built in 1962 with above grade area and crawl space of 882 square feet (SF), and five plumbing fixtures. The property has a detached garage with 560 SF, a carport with 616 SF, and a second carport with 1,200 SF. The overall quality is fair and the condition is badly worn.
19. Ms. Nelson argued that the County Board had insufficient competent evidence to reduce the Subject Property value and acted in favor of a reduction due to a pending 2023 Commission decision. Ms. Nelson argued this action was arbitrary and unreasonable, and created disequalization within the Subject Property neighborhood.
20. All taxable real property must be assessed as of January 1 at 12:01 a.m.<sup>16</sup>
21. The assessed value for real property may be different from year to year according to the circumstances.<sup>17</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>18</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>19</sup> For this reason, it is arbitrary and unreasonable for a county board to take action, (or refrain from action) due to pending Commission decisions.

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<sup>14</sup> Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

<sup>17</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988).

<sup>18</sup> *Id.*, 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).

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

22. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>20</sup>
23. 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.<sup>21</sup>
24. “[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.”<sup>22</sup> 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.”<sup>23</sup>
25. Ms. Nelson provided documentation as to the methodology used to value the Subject Property as of January 1, 2024, using professionally accepted mass appraisal methods.
26. Supportive materials from Ms. Nelson included an equalization study, Property Record Files (PRFs) of the comparable parcels discussed at hearing, and the 2024 Reports and Opinions of the Property Tax Administrator.
27. The County Attorney did not provide information for the Commission to consider, however, “[T]he County Board need not put on any evidence to support its valuation of the property at issue unless the [appellant] establishes the Board’s valuation was unreasonable or arbitrary.”<sup>24</sup>

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<sup>20</sup> Neb. Rev. Stat. § 77-201(1)-(3) (Cum. Supp. 2022).

<sup>21</sup> *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845, 906 N.W.2d 285, 295 (2018).

<sup>22</sup> *Id.*, 298 Neb. at 853, 906 N.W.2d at 299.

<sup>23</sup> *Id.*

<sup>24</sup> *Wheatland Indus.*, 304 Neb. at 647, 935 N.W.2d at 771. See also *Pinnacle Enters.*, 320 Neb. at 311, \_\_\_ N.W.3d at \_\_\_.

28. Competent evidence can be “evidence tending to show that the valuation” adopted by a county board of equalization is questionable.<sup>25</sup> In this case, the County Assessor provided clear and convincing evidence to support her valuation. The action by the Appellee lowering the Subject Property was arbitrarily established and for this reason, the County Board is reversed.
29. The Appellant 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 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	\$104,400
<u>Improvements</u>	<u>\$ 37,325</u>
Total	\$141,725

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.
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.

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<sup>25</sup> *Betty L. Green Living Tr. v. Morrill Cty. Bd. of Equalization*, 299 Neb. 933, 911 N.W.2d 551 (2018).

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



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Jackie S. Russell, Commissioner