

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

ROSE M. NELSON
APPELLANT,

V.

MORRILL COUNTY BOARD
OF EQUALIZATION, ROBERT
D. NICHOLS,
APPELLEES.

CASE NO: 24A 0608

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

I. BACKGROUND

1. The Subject Property is a vacant agricultural parcel in Morrill County, parcel number 200053313.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$96,665 for tax year 2024.
3. Robert D. Nichols (the Taxpayer) protested this value to the Morrill County Board of Equalization (the County Board) and requested a lower value for tax year 2024.
4. The County Board determined that the taxable value of the Subject Property was \$73,390 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. Tammi Nichols 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 unreasonable rests upon the taxpayer on appeal from the action

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.

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 evaluation of the evidence presented to it.¹⁴ The Commission's

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.*

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

Decision and Order shall include findings of fact and conclusions of law.¹⁵

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

18. The Subject Property, as assessed on January 1, consisted of 12.25 acres of feedlot use, 6.41 acres grassland, and 22.15 acres irrigated land, totaling 40.81 acres according to the 2024 Real Estate Breakdown Report, Exhibit 3 page 6.
19. The County Board determined that only 3.42 acres were to be classified as feedlot use, 15.44 acres classified as grassland, and 21.8 acres classified irrigated land, totaling 40.66 acres according to the 2024 Real Estate Breakdown Report created after BOE action on Exhibit 3 page 5.
20. Ms. Nelson argued that the County Board arbitrarily and unreasonably reduced the Subject Property value without basis creating disequalization within the Subject Property neighborhood.
21. 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).
22. The R&O details that Standard Appraisal Services is utilized for assisting with intensive use value application in Morrill County.
23. Ms. Nichols stated that because the Subject Property only acts as a small feedlot operation five months out of the year, the predominant use of the land is as grassland and should be valued as such.

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

24. Ms. Nichols stated that the ground is not farmed in a grassland capacity during the remaining seven months of the year, but rather, cows graze the voluntary grass and weeds that grow within those months. There is a 5" concrete apron in the north pen and all other signs of the feedlot production are semi-permanent but remain for the entire year.
25. Ms. Nelson argued that because the ground totaling 12.25 acres is used for intensive use purposes and not for grassland production, the predominant use is as a feedlot.
26. The Commission must look to the value of the Subject Property as of January 1 of each tax year.¹⁶
27. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁷
28. "Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture."¹⁸
29. The Commission finds that Taxpayer is not using the full 12.25 acres classified as feedlot on January 1 for an agricultural purpose other than an intensive use classification and the County Board erred in reducing the number of acres associated with feedlot use.
30. 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.
31. 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.

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

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

¹⁸ Neb. Rev. Stat. § 77-1359(2)(a) (Reissue 2018).

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:

Total	\$96,665
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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.
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