

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

830 L LLC
APPELLANT,

V.

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

CASE NOS: 24C 0312 & 25C
0974

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

I. BACKGROUND

1. The Subject Property consists of an improved commercial parcel in Lancaster County, parcel number 10-26-212-010-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$788,700 for tax year 2024 and \$806,400 for tax year 2025.
3. 830 L LLC (the Taxpayer) protested these values to the Lancaster County Board of Equalization (the County Board) and requested assessed values of \$630,941 for tax year 2024 and \$551,276 for tax year 2025.
4. The County Board determined that the taxable value of the Subject Property was \$788,700 for tax year 2024 and \$806,400 for tax year 2025.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on April 2, 2026, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Brian P. Morrissey was present at the hearing for the Taxpayer.

8. Priscilla Hruby (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, 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 *Botdorf 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 County Board accepted the County Assessor's valuations in both tax years 2024 and 2025 in its decisions.
18. The Taxpayer brought this appeal challenging the County Assessor's application of the income approach in the assessments of the Subject Property in tax years 2024 and 2025.
19. Specifically, the Taxpayer argues the Subject Property's actual value for 2024 and 2025 is better calculated under the income approach using the Taxpayer's actual vacancy, rental rates per square foot, and expense data, as well as capitalization rates provided by the Taxpayer, rather than those used by the County Assessor. The Taxpayer also argues the land valuation by the County Assessor is unsupported.
20. The Taxpayer raised only the issue of actual value and not equalization.
21. The Commission begins with the issue of land valuations.
22. Both the Taxpayer and the County Board presented the Subject Property's 2024 and 2025 property record files (PRFs).
23. The Taxpayer argues the PRFs show no comparable sales to support the land valuations and that the valuation of the land alone comprising 63 percent of the Subject Property's value (as calculated by the Taxpayer) "strains credulity."
24. For both tax years at issue, the PRFs show the County Assessor performed an income approach analysis, arrived at the total value for the Subject Property, then allocated a portion of that total value to the land.
25. The Taxpayer presented no information which shows the assessed values allocated to the Subject Property's land in tax years 2024 and 2025 are incorrect.
26. As to the County Assessor's application of the income approach, the Taxpayer points the Commission to the Nebraska Supreme Court's recent decision in *Pinnacle Enters., Inc. v. Sarpy Cty. Bd.*

of *Equalization*¹⁶ to support the proposition that actual figures may be used in the income approach when verified, or consistent with market figures.¹⁷

27. The Taxpayer presented itemized rent rolls and income statements to show the actual figures, along with an “independent market analysis” titled as an underwriting report (Underwriting Report).
28. The Taxpayer alleges the information presented shows the estimated vacancy rate used in the County Assessor’s income approach analysis is significantly lower than the Subject Property’s actual vacancy rate, that the Subject Property’s actual net rents are lower than the County Assessor’s estimates, and that actual operating expenses exceed the County Assessor’s estimates.
29. The Taxpayer also argues these actual figures are corroborated by the Underwriting Report.
30. The Underwriting Report also includes a higher capitalization rate than used by the County Assessor.
31. Each of these factors argued by the Taxpayer would lower the Subject Property’s valuations if applied to the income approach.
32. The Taxpayer also submitted a proposed valuation for both tax years 2024 and 2025 applying the Subject Property’s actual figures and the Taxpayer’s proposed capitalization rates of 10.00% in 2024 and 10.50% in 2025.
33. The Taxpayer’s proposed valuations are \$630,941 in 2024 and \$551,276 in 2025.
34. The Taxpayer argues that the Subject Property’s actual figures demonstrate the assessed values are too high and that the actual figures may be used under *Pinnacle*.
35. In *Pinnacle*, the taxpayers there had protested the assessed values of their properties to the Sarpy County Board of

¹⁶ 320 Neb. 303, 27 N.W.3d 1 6 (2025).

¹⁷ *Id.*, 320 Neb. at 312, 27 N.W.3d at 8.

Equalization (Sarpy County Board).¹⁸ The Sarpy County Board agreed with the taxpayers and its decision was appealed to the Commission by the Sarpy County Assessor.¹⁹

36. At the Commission hearing, the *Pinnacle* taxpayers presented testimony from a licensed real estate appraiser who was the referee during the protest proceeding before the Sarpy County Board.²⁰ This appraiser testified the taxpayers had used the same valuation method as the Sarpy County Assessor, except they used actual gross income in their calculations rather than an estimate.²¹ The taxpayers had provided the appraiser with a pro forma showing actual income for one month and the appraiser verified that the information in the pro forma was generally reflective of the taxpayers' monthly income.²² Finally, the appraiser also compared the actual income information with estimated price information from an online database based upon available broker price listings and a survey of surrounding properties.²³ Even though the actual income information given to the appraiser by the taxpayers was from 2017, the appraiser testified it was consistent with database estimates from 2020 and 2021, the tax years at issue.²⁴
37. This Commission held the Sarpy County Board's reliance on the referee appraiser was misplaced because the appraiser used the actual income information provided by the taxpayers and not typical market rates.²⁵ The Commission then found the original assessments were "consistent with professionally accepted mass appraisal techniques" and vacated and reversed the board.²⁶
38. The Supreme Court examined the Commission's decision in light

¹⁸ *Id.*, 320 Neb. at 304, 27 N.W.3d at 3.

¹⁹ *Id.*

²⁰ *Id.*, 320 Neb. at 305-06, 27 N.W.3d at 4.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, 320 Neb. at 307, 27 N.W.3d at 5.

²⁶ *Id.*, 320 Neb. at 308, 27 N.W.3d at 5.

of the standards of review cited above.²⁷

39. The Commission relied on industry publications which state:
“Actual or reported figures can be used as long as they reflect typical figures (or typical figures can be used for all properties).’
‘For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases.’”²⁸
40. The Supreme Court reviewed the appraisal standards quoted by the Commission, and did not read those statements “to say that actual income figures cannot be used under the income approach or cannot be used in conjunction with market typical expense, vacancy, and capitalization rates.”²⁹ Rather, the appraisal publications quoted “said actual, reported figures could be used if they ‘have been verified or are consistent with estimated (typical) figures.’”³⁰
41. Thus, the Supreme Court held that the Commission could not overturn the board’s valuation decisions as arbitrary or unreasonable on the grounds that they were based on actual income information because the appraiser had “provided a basis for the Board to find that the actual income figures were consistent with market typical income[.]”³¹
42. In other words, because the Sarpy County Board’s decisions to lower the valuations were consistent with the quoted appraisal standards, those decisions could not be found arbitrary or unreasonable based on failure to follow those standards.
43. Applying the standards of review and holding in *Pinnacle* here requires affirming the County Board.
44. Again, the first burden of proof involves a presumption that the

²⁷ See *id.*, *supra* notes 3–9.

²⁸ *Id.*, 320 Neb. at 307, 27 N.W.3d at 5. See also International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017); International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 341 (2011).

²⁹ *Pinnacle Enters.*, 320 Neb. at 312, 27 N.W.3d at 8.

³⁰ *Id.*, 320 Neb. at 312-13, 27 N.W.3d at 8.

³¹ *Id.*, 320 Neb. at 313, 27 N.W.3d at 8.

- board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.³² 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.³³
45. “Competent evidence is evidence that is admissible and tends to establish a fact in issue.”³⁴
46. Merely because evidence is admissible “does not automatically lead to the conclusion that such evidence constitutes competent evidence contrary to the presumption. That determination involves considering not only whether the taxpayer presented admissible evidence but specifically whether the substance of the evidence presented by the taxpayer was competent to rebut the presumption that the Board faithfully performed its duties and had sufficient competent evidence to make its determinations.”³⁵
47. The Taxpayer’s information presented at the hearing consists of rent roll itemizations, income statements, and the Underwriting Report.
48. These documents do not tend to establish that the County Board failed to faithfully perform its duties or act upon sufficient competent evidence in making its decisions.
49. First, the County Assessor followed the income approach in the assessment. The income approach is a statutorily approved method of mass appraisal.³⁶ The Taxpayer acknowledged this at the hearing.
50. Again, the County Board affirmed the County Assessor’s values.

³² *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6 (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. at 818, 1 N.W.3d at 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).

³³ *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.

³⁴ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 297-98 (2018).

³⁵ *Betty L. Green Living Tr. v. Morrill Cty. Bd. of Equalization*, 299 Neb. 933, 948, 911 N.W.2d 551, 561 (2018).

³⁶ Neb. Rev. Stat. § 77-112 (Reissue 2018).

51. Second, the Underwriting Report does not appear to follow professionally accepted mass appraisal standards.
52. The Taxpayer's Underwriting Report was prepared by Mr. Nick DiZona from a service called CoStar which is "Licensed to Real Property Appraisals."
53. "When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law."³⁷
54. It is not clear from the Underwriting Report whether Mr. DiZona is a licensed appraiser. Further, the Report contains no certification that it was created according to professional standards of appraisal.
55. Third, the Taxpayer's documents do not show the Taxpayer's actual figures reflect typical figures. Specifically, the Underwriting Report *itself* shows the Taxpayer's asserted actual vacancy figures are not typical of the market.
56. Where the Taxpayer asserts its actual vacancy rates were approximately 27.7 percent in 2023 and 74 percent in 2024 and 2025, the Underwriting Report contains a market summary showing the Subject Property's market area of downtown Lincoln had typical vacancy rates fluctuating between 6.5 percent and 9.5 percent in that time. The same analysis in the Underwriting Report showed the city of Lincoln's overall vacancy rate as fluctuation between approximately 6.5 percent and 8.5 percent in the same time frame.
57. Thus, the actual vacancy rates stated by the Taxpayer are not verified to be typical.
58. For these reasons, the Underwriting Report does not constitute competent evidence going to the initial presumption in favor of the County Board, and the Commission gives it little weight.

³⁷ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. at 850, 906 N.W.2d at 298.

59. Finally, even if the Taxpayer had presented competent evidence to rebut the presumption, the Taxpayer’s reliance on Pinnacle is misplaced.
60. The ruling in *Pinnacle* was that where the Sarpy County Board made its decision on reported and verified actual figures consistent with professional mass appraisal standards, this Commission could not overturn that decision as arbitrary or unreasonable for failure to follow those same standards.
61. The effect of the Taxpayer’s arguments is that because the Supreme Court held in *Pinnacle* that verified actual figures *may* be used in assessments, the County Assessor, or the County Board, *should have* used the Taxpayer’s actual figures in the assessments. This does not follow from *Pinnacle*.
62. In the same way that the professional mass appraisal standards frequently cited by this Commission provide “Actual or reported figures *may be used* as long as they reflect typical figures (or typical figures can be used for all properties)[,]”³⁸ those standards do not *require* an assessor to look to the actual figures in performing an income approach analysis.
63. “For properties with reported figures *the assessor has two choices*: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, *or* (2) consistently use estimated figures in all cases.”³⁹
64. The Taxpayer has not shown any violation of these standards by the County Assessor or the County Board.
65. Because the County Assessor used professionally accepted mass appraisal standards in the income approach in the 2024 and 2025 assessments, the County Board’s decisions accepting those assessments are based on those professionally accepted standards.
66. Thus, under *Pinnacle*, the Commission cannot overturn the

³⁸ See International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

³⁹ International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 341 (2011) (emphasis added).

County Board's decisions valuing the Subject Property in 2024 and 2025 as arbitrary or unreasonable on the grounds that the failure to use the Taxpayer's actual figures and proposed capitalization rate is a failure to follow professional mass appraisal standards.

67. The Taxpayer's position is, at most, a mere difference of opinion regarding the use of actual figures or estimates which does not meet the Taxpayer's burden.⁴⁰
68. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
69. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2024 and 2025 are affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Total	\$788,700
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3. The taxable value of the Subject Property for tax year 2025 is:

Total	\$806,400
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⁴⁰ See *Wheatland Indus.*, 304 Neb. at 644-45, 935 N.W.2d at 769-70 (citing *Betty L. Green Living Tr.*, 299 Neb. at 941-42, 911 N.W.2d at 558) ("The burden of persuasion imposed on a complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon the property when compared with valuations placed on other similar property is grossly excessive and is a result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.").

4. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2024 and 2025.
8. This Decision and Order is effective on June 16, 2026.

SIGNED AND SEALED: June 16, 2026.

SEAL



James D. Kuhn, Commissioner