

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

FOUNTAIN HILLS
PROPERTIES II LLC
APPELLANT,

CASE NOS: 24C 0517, 25C
0182, 24C 0518, 25C 0181

V.

BUFFALO COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Properties in the captioned appeals are improved commercial parcels in Buffalo County, property ID numbers 580143375 (Case Nos. 24C 0517 and 25C 0182) and 580143350 (Case Nos. 24C 0518 and 25C 0181), respectively.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property in Case Nos. 24C 0517 and 25C 0182 at \$750,735 for tax year 2024 and \$775,755 for tax year 2025. The County Assessor assessed the Subject Property in Case Nos. 24C 0518 and 25C 0181 at \$1,508,220 for tax year 2024 and \$1,551,310 for tax year 2025.
3. Fountain Hills Properties II LLC (the Taxpayer) protested these values to the Buffalo County Board of Equalization (the County Board) and requested assessed values of \$483,000 for tax year 2024 and \$497,490 for tax year 2025 for the Subject Property in Case Nos. 24C 0517 and 25C 0182. For the Subject Property in 24C 0518 and 25C 0181, the Taxpayer requested assessed values of \$966,000 in tax year 2024 and \$994,980 in tax year 2025.
4. The County Board determined that the taxable value of the Subject Property in Case Nos. 24C 0517 and 25C 0182 was

\$750,735 for tax year 2024 and \$775,755 for tax year 2025. The County Board determined that the taxable value of the Subject Property in Case Nos. 24C 0518 and 25C 0181 was \$1,508,220 for tax year 2024 and \$1,551,310 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 November 14, 2025, at Law Enforcement Center, 111 Public Safety Drive, Community Building 2nd Floor, Grand Island, NE, before Commissioner James D. Kuhn.
7. Steve Craig was present at the hearing for the Taxpayer.
8. Andrew Hoffmeister, Wendy Vawser, Roy Meusch, and Josiah Davis were 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

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)).

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
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

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.

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)).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Taxpayer brought this appeal challenging the County Assessor's income approach method for the Subject Properties in tax years 2024 and 2025.
18. The Taxpayer did not provide the property record files (PRFs) for either of the Subject Properties from tax years 2024 or 2025. The County Board presented the PRFs for the Subject Properties from tax year 2025, but not from 2024. Without the information contained in the 2024 PRFs, the Commission is unable to examine the assessment details for the Subject Properties in 2024.
19. The Taxpayer also provided a Form 8825 Rental Real Estate Income and Expenses of a Partnership or an S Corporation (Form 8825) at the hearing. The Taxpayer's Form 8825 appears to be income and expense data from tax year 2024. No other such statements or other documentation containing any income or expense data were provided.
20. The Taxpayer also presented a written statement dated August

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).

- 21, 2024, arguing the depreciation expense allowed as a deduction under federal tax law was “added back as income” by the County Assessor. The Taxpayer also asserts in its written statement that increases in interest rates, insurance premiums, and real property taxes lower valuations and that the Taxpayer cannot adequately raise rents to compensate for such expenses.
21. “[T]he income and expenses proper and acceptable for income tax purposes are not necessarily the same as those appropriate for the income approach.”¹⁶ “Only the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed.”¹⁷
 22. In the income and expense analysis, insurance expense is a proper expense to deduct from the effective gross income.¹⁸ However, the Taxpayer presented no information to show that the County Assessor figures were incorrect or that the County Assessor failed to account for insurance expenses in the income approach.
 23. The Taxpayer’s assertions about depreciation also lack merit. Depreciation expenses are “considered as recapture and handled as part of the capitalization rate,” thus making depreciation an improper deduction in the income and expense analysis.¹⁹ In other words, depreciation is treated differently under the income approach to value than it is by the Internal Revenue Code.
 24. The Taxpayer presented no information showing the County Assessor’s income approach analysis was incorrect.
 25. Finally, in its 2025 appeals, the Taxpayer asserts the County Board failed to follow the Property Tax Growth Limitation Act (the Act). Specifically, the Taxpayer asserts that the assessed values grew more than three percent and such increases violate the Act. Neither the Act nor any other provision of Nebraska law

¹⁶ International Association of Assessing Officers, *Property Assessment Valuation* 318 (3d ed. 2010).

¹⁷ *Id.*

¹⁸ *Id.* at 329.

¹⁹ *Id.* at 330.

limits the change in assessments from year to year by three percent.

26. 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.
27. 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 Properties for tax years 2024 and 2025 are affirmed.
2. The taxable value of the Subject Property in Case No. 24C 0517, property ID number 580143375, for tax year 2024 is:

Total	\$750,735
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3. The taxable value of the Subject Property in Case No. 25C 0182, property ID number 580143375, for tax year 2025 is:

Total	\$775,755
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4. The taxable value of the Subject Property in Case No. 24C 0518, property ID number 580143350, for tax year 2024 is:

Total	\$1,508,220
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5. The taxable value of the Subject Property in Case No. 25C 0181, property ID number 580143350, for tax year 2025 is:

Total	\$1,551,310
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6. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2024 and 2025.
10. This Decision and Order is effective on May 28, 2026.

SIGNED AND SEALED: May 28, 2026.

SEAL



James D. Kuhn, Commissioner