BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

LEONARD ORLOWSKI APPELLANT, V. ANTELOPE COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NOS: 24R 0093, 25R 0027 DECISION AND ORDER AFFIRMING THE DECISIONS OF THE ANTELOPE COUNTY BOARD OF EQUALIZATION

For the Appellant: Leonard Orlowski, Pro Se	**For the Appellee:** Joseph Smith, Deputy Antelope County Attorney

These appeals were heard before Commissioners Hotz and Russell. Commissioner Hotz presided.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 6,346 square foot home located in the city of Elgin, Antelope County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property is found at Exhibits 6 and 8.

II. PROCEDURAL HISTORY

The Antelope County Assessor determined the assessed value of the Subject Property was $449,220 for tax year 2024. Leonard Orlowski (the Taxpayer) protested this assessment to the Antelope County Board of Equalization (the County Board) and requested a taxable

value of $262,750. The County Board determined the taxable value of the Subject Property for tax year 2024 was $449,220.[1]

For tax year 2025, the County Assessor determined the assessed value of the Subject Property was $489,140. The Taxpayer protested this assessment to the County Board and requested a taxable value of $262,750. The County Board determined the taxable value of the Subject Property for tax year 2025 was $489,140.[2]

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a Single Commissioner hearing on October 21, 2025, and issued an order May 20, 2026. On June 18, 2026, the Taxpayer requested a rehearing. The Commission issued an order for hearing on June 23, 2026, for October 5, 2026. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1 to 10 were admitted into evidence.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.[3] When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.[4] 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.[5] That

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[1] Exhibit 1.
[2] Exhibit 2.
[3] See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).
[4] *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)).
[5] *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).

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.[6]

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.[7] The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.[8]

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.[9] Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.[10]

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.[11] 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.[12]

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or

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[6] *Pinnacle Enters.*, 320 Neb. at 309, 27 N.W.3d at 6.
[7] *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.
[8] *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.
[9] Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).
[10] *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).
[11] 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).
[12] *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)).

action appealed from is based.[13] The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.[14] 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.[15] The Commission's Decision and Order shall include findings of fact and conclusions of law.[16]

IV. RELEVANT LAW

Under Nebraska law,

> Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.[17]

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.[18] Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.[19] Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and

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[13] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[14] *Id.*
[15] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[16] Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).
[17] Neb. Rev. Stat. § 77-112 (Reissue 2018).
[18] *Id.* (citing Neb. Rev. Stat. § 77-1371).
[19] *Omaha Country Club*, 11 Neb. App. at 180, 645 N.W.2d at 829.

has the same meaning as assessed value.[20] All real property in Nebraska subject to taxation shall be assessed as of January 1.[21] All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.[22]

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.[23] "Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value."[24] The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.[25] Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.[26] Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.[27] If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or

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[20] Neb. Rev. Stat. § 77-131 (Reissue 2018).
[21] See Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).
[22] Neb. Rev. Stat. § 77-201(1) (Cum. Supp. 2022).
[23] Neb. Const., art. VIII, § 1.
[24] *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).
[25] *Moser*, 312 Neb. 757, 980 N.W.2d 611 (2022) (Syllabus by the Court); see also *MAPCO*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb. App. 582, 597 N.W.2d 623, (1999).
[26] *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).
[27] *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

failure of plain legal duty, and not mere errors of judgment.[28] There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.[29]

V. FINDINGS OF FACT AND ANALYSIS

Three witnesses testified on behalf of the Taxpayer: Leonard Orlowski, Judith Orlowski, and Meghan Beckman. Each was familiar with both the exterior and the interior of the Subject Property. The Orlowskis were the owners and residents, and Beckman, their daughter, had stayed in the property extensively and had been involved in multiple maintenance and repair projects in the interior of the home. The witnesses described a once-grand and large building built in the 1880's that had experienced significant aging and depreciation.

Leonard Orlowski also testified to a land dispute relating to Plantation Street at the front of the parcel; to issues relating to a homestead exemption application; to the effect on value due to numerous wind turbines within sight of the property; to the effect on value due to long-term camping spaces in the public park across the street from the property; and to his opinion of value of $310,000 derived from his machinery valuation formula based upon the 2010 purchase price.

Regarding the condition of the home and its depreciation, the witnesses testified that the roof had multiple leaks; the exterior siding was in poor condition; a concrete patio was deteriorated, there were regularly bats in the main areas of the house; the attic was filled with bat feces; a bedroom lath and plaster ceiling had completely collapsed; layers of wallpaper in multiple rooms were in disrepair; carpeting throughout the house was decades old and in poor condition; there had

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[28] *Pinnacle Enters.*, 320 Neb. at 309–10, 27 N.W.2d at 6 (quoting *Moser*, 312 Neb. at 767, 980 N.W.2d at 619). See also *Newman v. County of Dawson,* 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

[29] *Moser*, 312 Neb. at 775, 980 N.W.2d at 624) (quoting *Newman*, 167 Neb. at 672, 94 N.W.2d at 50).

been multiple plumbing fixture leaks; several plumbing fixtures had been removed from service due to leaking; and there had been a sewage backup in the basement.

The home had been commercially operated as a bed and breakfast until 2019. Since 2019, the Orlowskis utilized the home as their primary residence.

When asked by the County Assessor for permission to inspect the interior of the home, the Orlowskis denied the Assessor's request.

The County Assessor, Kelly Mueller-Oltjenbruns, testified regarding the assessments for both tax years. She confirmed the home had been rated as good quality for tax year 2024 and as very good quality for tax year 2025. She explained that a conversion from one computer assisted mass appraisal (CAMA) program to another (Terra Scan to MIPS) accounted for the quality rating change. She affirmed the condition rating of the house was average both years. When asked whether her quality and condition ratings of the home would have been different based upon the testimony of the Taxpayer's witnesses, she testified she would make no change. She confirmed her requests to complete an internal inspection were denied by the Orlowskis and that the last internal inspection of the home was done before 2010.

The Assessor also testified that the Subject Property was classified as a commercial property until tax year 2023. The reclassification was made when the Assessor became aware that the property was no longer operating commercially as a bed and breakfast. It was first assessed as a residential property for tax year 2024.

The County Assessor further testified that increases for residential properties for tax year 2025 were necessary for the city of Elgin due to sales in the market and the applicable costing tables being updated for tax year 2025. The County Assessor maintained her opinions of value to be the same as assessed.

The County Assessor utilized a CAMA system and updated costing tables to value the Subject Property as a residential parcel for tax

years 2024 and 2025. The County Board agreed with these assessments.

Since an internal inspection request was denied by the Taxpayer, the County Assessor was unable to consider whether the condition rating of the property should be lowered. Also, none of the exterior or interior condition issues noted above were quantified by the Taxpayer to show what effect they had on the value of the property. Further, neither the land dispute issue nor the presence of the wind turbines and the trailer camping were quantified as to what effect they had on the value of the property. Based upon these facts in evidence, we cannot conclude the County Board determinations were incorrect or that the determinations made by the County Board were arbitrary or unreasonable.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For the reasons set forth above, the determination of the County Board should be affirmed.

VII. ORDER

IT IS ORDERED THAT:

1. The decision of the Antelope County Board of Equalization determining the value of the Subject Property for tax year 2024 is affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	**$ 26,390**
Improvements	**$422,830**
Total	**$449,220**

3. The decision of the Antelope County Board of Equalization determining the value of the Subject Property for tax year 2025 is affirmed.
4. The taxable value of the Subject Property for tax year 2025 is:

Land	**$ 26,390**
Improvements	**$462,750**
Total	**$489,140**

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Antelope County Treasurer and the Antelope County Assessor, pursuant to Neb. Rev. Stat. § 77-5018.
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2024 and 2025.
9. This Decision and Order is effective for purposes of appeal on October 26, 2026.[30]

SIGNED AND SEALED: October 26, 2026.

SEAL

Robert W. Hotz, Commissioner

Jackie S. Russell, Commissioner

[30] Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.