

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

BENJAMIN J. MILLER
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 24R 0652

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

I. BACKGROUND

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 0537790235.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$682,300 for tax year 2024.
3. Benjamin J. Miller (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$682,300 for tax year 2024.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 6, 2025, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Ben Miller was present at the hearing for the Taxpayer.
8. Tim Tran (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
14. The order, decision, determination or action appealed from shall

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.

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.

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, ____ 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).

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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Subject Property is a two-story, single-family home built in 1989 with above grade area of 3,451 square feet (SF), walkout basement area of 1,971 SF of which 1,400 SF is fully finished. There are four full and one-half baths, a built-in garage with 759 SF, and an in-ground swimming pool with 800 SF. The property houses a concrete slab patio with 700 SF, 113 SF covered porch area, and a wood deck with 479 SF. The overall quality rating is very good, and the condition rating is average.
18. The Taxpayer stated that the properties in the Subject Property neighborhood are not equalized, creating an arbitrary and unreasonable value for the Subject Property.
19. The Taxpayer provided several documents as analysis for comparing the Subject Property to other properties located in the same neighborhood.
20. The Taxpayer's analysis included an average Price Per Square Foot (PPSF) comparison of the Subject Property to the other properties citing comparability amongst them. The Taxpayer did not provide Property Record Files (PRFs) for any of the properties discussed in the analysis. Without the details contained in the PRF, the Commission is unable to determine whether the properties discussed are comparable to the Subject Property.¹⁶
21. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (style, size, finish, condition, etc.), and location.¹⁷ It is unclear

¹⁶ For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on October 3, 2025, includes the following:

NOTE: Copies of the County's Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County's web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

¹⁷ International Association of Assessing Officers, *Property Assessment Valuation* 169-79 (3rd ed. 2010).

from the Taxpayer's analysis what the components of contributory value are for each of the properties used in the comparison. If the properties differ in their components, an adjustment needs to be quantified and made part of the analysis.

22. "A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject's unknown value."¹⁸
23. When comparing physical characteristics of like properties, if the comparable property is inferior in some respect, the sale price is adjusted upward, just as if it is superior, it will be adjusted downward.¹⁹
24. "Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments."²⁰
25. All real property, other than agricultural land and horticultural land, is valued at 100% of its actual value.²¹
26. A determination of actual value may be made by using professionally accepted mass appraisal methods.²² The methods expressly stated in statute are the sales comparison approach, the income approach, and the cost approach.²³
27. The Appraiser verified the property information and components for the Subject Property with the Taxpayer at hearing and deemed the information contained on the supplied PRF to be correct.

¹⁸ Appraisal Institute, *Appraising Residential Properties* 334 (4th ed. 2007).

¹⁹ International Association of Assessing Officers, *Property Assessment Valuation* 105 (3rd ed. 2010).

²⁰ Appraisal Institute, *The Appraisal of Real Estate* 389 (14th ed. 2013).

²¹ Title 350 Neb. Admin. Code ch. 10, § 003.01A (10/26/2014).

²² Neb. Rev. Stat. § 77-112 (Reissue 2018).

²³ *Id.*

28. The Appraiser stated there was a revaluation conducted to the Subject Property neighborhood for 2024. The increases (or decreases) to each property in the market study area were dependent upon the property data components and comparable sales within the study period.
29. The Appraiser provided a packet of information for the Subject Property. The information details the Subject Property's components of contributory value, the subsequent cost approach to value, sales from the Subject Property neighborhood, and the impact of the market sales data on the property's valuation using professionally accepted mass appraisal practices.
30. The Taxpayer's opinion of value was determined by an average PPSF comparison of the Subject Property to the provided properties without the use of adjustments to any differing physical characteristics prior to analysis. The Taxpayer's method is not identified in statute and no evidence of its professional acceptance as an accepted mass appraisal method has been produced. Therefore, the Commission finds it does not constitute sufficient competent evidence.
31. The Taxpayer has not 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.
32. The Taxpayer has not 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 affirmed.

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 affirmed.
2. The taxable value of the Subject Property for tax year 2024 is:

Land	\$ 73,200
<u>Improvements</u>	<u>\$609,100</u>
Total	\$682,300

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas 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 15, 2026.

Signed and Sealed: January 15, 2026



Jackie S. Russell, Commissioner