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

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| LEXINGTON APARTMENT HOMES, LLC<br>APPELLANT,<br><br>v.<br><br>DAWSON COUNTY BOARD OF EQUALIZATION,<br>APPELLEE. | CASE NO: 25C 0298<br><br>DECISION AND ORDER AFFIRMING THE DECISION OF THE DAWSON COUNTY BOARD OF EQUALIZATION |

## I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Dawson County, parcel number 240132777.
2. The Dawson County Assessor (the County Assessor) assessed the Subject Property at $1,841,406 for tax year 2025.
3. Lexington Apartment Homes, LLC (the Taxpayer) protested this value to the Dawson County Board of Equalization (the County Board) and requested an assessed value of $1,154,250 for tax year 2025.
4. The County Board determined that the taxable value of the Subject Property was $1,841,406 for tax year 2025.
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 June 26, 2026, at Best Western Plus North Platte Inn & Suites, 3201 S Jeffers St., North Platte, NE 69101, before Commissioner Jackie S. Russell.
7. Wil Hupp was present at the hearing for the Taxpayer.
8. Darlene M. Shafer (County Attorney) and Nic VanCura (Assessor) 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 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]

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[1] Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2024).
[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]

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[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)).

[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) (Cum. Supp. 2024).

## III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Subject Property is a multi-family apartment complex with 48 units amongst four buildings. Each building was constructed in 1977 with 11,550 square feet (SF) above grade, and overall quality and condition ratings of average. There are four detached garage structures built in 1977 with 1,606 SF, and overall quality and condition ratings of average. There are 24 one-bedroom units and 24 two-bedroom units.
18. The Taxpayer argued that the Subject Property's valuation was arbitrary and unreasonable based on past value adjustments from the County Board, the physical condition, a broker's price opinion, cash flow of the property, and market conditions for rental properties in Dawson County.
19. The Taxpayer stated that the County Board lowered the Subject Property's value for tax year 2024 based on the same arguments used at the 2025 protest hearing.
20. The Commission must look to the value of the Subject Property as of January 1 of each tax year.[16]
21. The assessed value for real property may be different from year to year according to the circumstances.[17] For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.[18]
22. The Taxpayer stated that the physical condition of the Subject Property is poor.
23. The Taxpayer provided seven photos of the Subject Property. The photos depicted a set of concrete stairs with deterioration, loose bricks under a different porch, several exterior windows depicting rotted frames or broken glass storm panes, asphalt

[16] Neb. Rev. Stat §77-1301(Cum. Supp. 2022)
[17] *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).
[18] *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

paving damage in front of one detached garage building, and roof damage on the same garage building.

24. The Assessor stated that the Subject Property was physically inspected in 2022 and was determined to be in average condition. The Assessor provided eight photographs of the Subject Property, four taken in 2020 and four taken in 2022.
25. The Assessor stated that an average condition rating acknowledges that there are deferred maintenance issues consistent with the age of the property, but the property is still in working order.
26. The Assessor stated that the pictures provided by the Taxpayer appeared to show the Subject Property with the same conditions that were observed in the 2022 inspection but are not representative of a lower condition rating compared to other similar quality and age properties in the county.
27. The Taxpayer did not present sufficient information to demonstrate that the condition rating of average for the Subject Property for tax year 2025 was arbitrary or unreasonable.
28. The Taxpayer provided the Commission with a Broker's Price Opinion from Real Estate Connection, Inc., determining market value of the Subject Property at $1,215,000 and a condition of poor for the Subject Property.
29. The Broker's Price Opinion does not indicate that it was completed by an independent licensed appraiser using uniform standards of professional appraisal practices for determining market value of a property. It also does not include supporting documentation as to how the value was derived and therefore, the Commission finds it does not constitute sufficient competent evidence and gives little weight to it.
30. The Taxpayer stated increases in property insurance has led to higher expenses and lower net operating income for the Subject Property.

31. The Taxpayer stated that use of an Income Approach with a capitalization rate of 5% would better reflect the market conditions and value of the Subject Property.
32. The Taxpayer provided two sets of twelve-month financials for the Commission to review. The financials were dated from June 2023 to June 2024 (June ’23 / ’24), and June 2024 to June 2025 (June ’24 / ’25).
33. The June ’23 / ’24 document shows a property insurance amount of $41,506 and Net Operating Income (NOI) of $96,570.08.
34. The June 24’ / ’25 document shows property insurance of $92,641.91 and NOI of $54,172.13.
35. The Taxpayer requested a valuation of $1,154,250 based on their income approach calculation using the provided NOI from June ’24 / ’25 at $54,172.13 and a capitalization rate (cap rate) of 5%. This reflects PGI of $370,800, a 5% vacancy and collection loss (V&CL) (as detailed on the document) and an 85% expense rate with real estate taxes included.[19]
36. The Assessor stated that a cost approach to value, reconciled with a sales approach, is used to set the Subject Property valuation as there is too much difficulty in obtaining the necessary data to complete an income approach. However, the market data that has been collected has shown that a 5% V&CL, 40% expense rate, and a 10% loaded cap rate are typical for the Subject Property’s market area.
37. The Assessor stated that the income for the Subject Property is typical in comparison to other 1-bedroom and 2-bedroom rental units in the Subject Property’s market area.
38. All real property, other than agricultural land and horticultural land, is valued at 100% of its actual value. [20]
39. Under § 77-112, actual value of real property for purposes of taxation may be determined using professionally accepted mass appraisal methods, including, but not limited to, (1) the sales

[19] June 2024 to June 2025 financials, expenses $298,087.87 divided by income $352,260 = 85%
[20] Title 350 Neb. Admin. Code, ch.10 § 003.01A (10/2014).

comparison approach, taking into account factors such as location, zoning, and current functional use; (2) the income approach; and (3) the cost approach. This statute does not require use of all the specified factors, but requires use of applicable statutory factors, individually or in combination, to determine actual value of real estate for tax purposes.[21]

40. "[U]nder §§ 77-103.01, 77-112, and 77-1363, assessors are not limited to a single method of determining the actual value of property for tax purposes. Rather, assessors are charged with a duty to consider a wide range of relevant factors in order to arrive at a proper assessment which does not exceed actual value.[22]

41. "In general, for income-producing properties, the income approach is the preferred valuation approach when reliable income and expense data are available, along with well-supported income multipliers, overall rates, and required rates of return on investment."[23]

42. Mass appraisal applications of the income approach begin with collecting and processing income and expense data. (These data should be expressed on an appropriate per-unit basis, such as per square foot or per apartment unit.) Appraisers should then compute normal or typical gross incomes, vacancy rates, net incomes, and expense ratios for various homogeneous strata of properties. These figures can be used to judge the reasonableness of reported data for individual parcels and to estimate income and expense figures for parcels with unreported data.[24]

43. "For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they

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[21] *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 845, 906 N.W.2d 285, 295 (2018).
[22] *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 853, 906 N.W.2d 285, 299 (2018).
[23] International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).
[24] International Association of Assessing Officers, *Standard on Mass Appraisal of Real Property* § 4.4 (July 2017).

have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases."[25]

44. "Taxpayers generally treat property taxes as fixed expenses. IAAO generally advocates that they be treated as a component of the capitalization rate, because they are based largely on the assessor's determination of market value. Thus, they are not recognized as an allowable expense; instead the capitalization rate is increased by the estimated effective tax rate."[26]
45. The Assessor stated that typical figures for the market area include 5% V&CL, 40% expense rate, and a 10% loaded cap rate.
46. The Taxpayer provided actual data from the Subject Property that included 5% V&CL, 85% expense rate (75% without real estate taxes), and a 5% cap rate.
47. The Taxpayer did not provide information to verify the expenses or show that their actual figures are consistent with estimated (typical) figures.
48. If the Commission were to look at the typical figures and actual figures for the Subject Property, the expense ratio and cap rate are significantly different.
49. The Commission finds that the Taxpayer's actual figures for expenses and a cap rate are not representative of the typical figures provided by the Assessor for the market area and therefore, non-representative of an appropriate income approach to value for the Subject Property.
50. 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.
51. 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.

[25] International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 341 (2011).
[26] International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 175 (2011).

## 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 2025 is affirmed.
2. The taxable value of the Subject Property for tax year 2025 is:

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| Land | $ 92,876 |
| Improvements | $1,748,530 |
| Total | $1,841,406 |

3. This Decision and Order, if no further action is taken, shall be certified to the Dawson County Treasurer and the Dawson 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 2025.
7. This Decision and Order is effective on September 4, 2026.

**SIGNED AND SEALED: September 4, 2026.**

***SEAL***

Jackie S. Russell, Commissioner