BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

EATING ESTABLISHMENT KEARNEY SE LLC APPELLANT, v. BUFFALO COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 25C 0665 DECISION AND ORDER AFFIRMING THE DECISION OF THE BUFFALO COUNTY BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Buffalo County, parcel number 602575995.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property at $1,563,225 for tax year 2025.
3. Eating Establishment Kearney SE LLC (the Taxpayer) protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of $1,150,900 for tax year 2025.
4. The County Board determined that the taxable value of the Subject Property was $1,563,225 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 September 28, 2026, at the Tax Equalization and Review Commission Hearing Room, 500 S. 16th Street, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Dan Rudolph was present at the hearing for the Taxpayer.

8. Andrew W. Hoffmeister, Josiah Davis (County Attorneys), and Roy Meusch (County 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

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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.

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]
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

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[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)).
[12] Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).
[13] *Id.*

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 Subject Property is a commercial fast-food establishment, built in 1988 with 4,388 square feet (SF). The structure is listed in good condition with a quality ranking of 2.50.
18. The Taxpayer argued that the value of the Subject Property was arbitrary and unreasonable according to a recent appraisal completed by Kubert Appraisal Group (Kubert Appraisal) with an effective date of January 1, 2025.
19. The Taxpayer provided a copy of the Kubert Appraisal for the Commission to review.
20. 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.[16]
21. The Assessor stated that the Subject Property's neighborhood was revalued using an Income Approach to value for tax year 2025.
22. The Assessor's Income Approach calculations for the Subject Property can be found on page 3 of the submitted Property Record File (PRF).
23. The Kubert Appraisal states that emphasis is given to the sales comparison and income approaches to value to support the reconciled opinion for the Subject Property of $1,200,000 for tax year 2025.
24. The Taxpayer stated that conversations regarding the analyses contained within the Kubert Appraisal were not discussed with the Kubert Appraisal Group prior to the hearing.

[14] Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).
[15] Neb. Rev. Stat. § 77-5018(1) (Cum. Supp. 2024).
[16] *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

25. The Kubert Appraisal explains that relevant sales factors and physical characteristics are given consideration in the analysis but does not show the breakdown of the consideration for each component analyzed. Rather, a value range is given as resulting from their adjustment grid.
26. The sales approach price per square foot value range within the Kubert Appraisal is listed as $100.12 to $281.35.
27. The Assessor argued that the sales comparison analysis used properties from non-comparable markets of Hastings and Holdrege.
28. The Commission questions the adjustments made for the differing components without full disclosure given within an adjustment grid or the Kubert Appraisal narrative and gives the sales comparison analysis little weight.
29. The Kubert Appraisal details the income approach to value as "using a local market with comparable rents for properties with similar profile and use" to compare to the Subject Property.
30. The Kubert Appraisal shows the use of two Grand Island, Nebraska properties, two Norfolk, Nebraska properties, and one Alliance, Nebraska property as comparables in the income approach detailing the properties' locations, size, rental rate per SF, start date of lease, and an adjusted (rental) rate.
31. The Assessor argued that rental information can be derived from the local market as was used in the income analysis for the County but appears to not have been considered in the Kubert Appraisal.
32. The Kubert Appraisal states that all market leases include a time adjustment that was used in the analysis, and the adjusted rent range resulted in $23.38 to $39.08 per SF to determine the potential gross income (PGI). The overall rental rate used was $25.00 per SF for the Subject Property's income analysis.

33. The PRF of the Subject Property shows a rate of $40.00 per SF[17] used in the County analysis to determine PGI for the Subject Property.
34. Comparing the remaining components of an income approach to value shows that the chosen variables by each analysis are similar with a vacancy rate of 4 – 5%, expense rate of 25%, and capitalization rates of 7.67 – 8%.
35. The Kubert Appraisal does not explain how the adjusted rental rates were derived, or explain how Norfolk or Alliance, Nebraska are similar markets to Kearney, Nebraska.
36. Therefore, only the PGI amounts (rental rates) differ in each analysis. The County analysis taking data from Kearney's market, and the Kubert Appraisal analysis taking data from other potentially comparative markets. The resulting PGI difference is $15.00 per square foot.
37. The use of other potentially comparative markets in the Kubert Appraisal does not compel the Commission that the Board was arbitrary or unreasonable in their decision.
38. The Commission finds that the Kubert Appraisal does not provide sufficient information for the Commission to understand all the rationale for the reviewer's opinions and conclusions [18], and therefore, the Commission gives it little weight.
39. The Taxpayer has produced competent evidence but 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:

[17] PRF p.3 PGI 175,520 / SF 4,388 = $40.00 Price per square foot
[18] Uniform Standards of Professional Appraisal Practice (USPAP) Standard 4.2(i), 2024

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:

Land	$ 477,135
Improvements	$1,086,090
Total	$1,563,225

3. 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.
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 October 29, 2026.

SIGNED AND SEALED: October 29, 2026

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SEAL



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Jackie S. Russell, Commissioner