BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

MARY A. DONOVAN MARTELLO APPELLANT, v. DOUGLAS COUNTY BOARD OF EQUALIZATION, APPELLEE.	CASE NO: 25R 0937 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 2117210000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at $467,400 for tax year 2025.
3. Mary A. Donovan Martello (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 $467,400 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 March 26, 2026, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Mary Donovan Martello was present at the hearing for the Taxpayer.
8. James G. Morris (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]

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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 Taxpayer brought this appeal alleging the 2025 taxable value of the Subject Property was not equalized with comparable properties in the area, that the 2025 assessment "contradicts market valuation," and that the Subject Property's third floor is incorrectly classified as living area. The Taxpayer also alleges the County Board's decision was based upon incorrect statements from the referee in the protest proceeding.
18. The Subject Property is a two-and-one-half story, single-family residence built in 1923 located at 5107 Jackson Street in Omaha, Nebraska. The residence is a two-and-one-half bathroom, three-bedroom home with 1,938 square feet. For tax year 2025, the Subject Property had a quality rating of "good" and a condition rating of "average."
19. The Subject Property's first floor is 850 square feet. The second floor is 768 square feet. The third floor is 414 square feet.
20. As an initial matter, the Taxpayer alleges the Subject Property's third floor is unlivable due to a lack of any heating or air conditioning, causing the temperature on the third floor to be "unbearable" most of the year. Therefore, the Taxpayer argues, the third floor should not be taxed as living area as it is currently classified.
21. The Taxpayer acknowledges that a prior owner placed a bathtub and some carpeting on the third floor, but asserts the third floor is "unlivable" most of the year due to lack of heating or air conditioning on that level.
22. That the third floor does not have those amenities does not determine whether the third floor is living area.
23. Thus, the Taxpayer has not demonstrated that the Subject Property's third floor was incorrectly classified.
24. Further, the Taxpayer did not quantify the impact, if any, of the third floor's lack of heating and air conditioning on the Subject Property's value.

25. Next, the Taxpayer asserts the Subject Property's 2025 assessment is not equalized with like properties.
26. The Taxpayer presented the property record files (PRFs) for the Subject Property, thirteen properties for comparison (Taxpayer's Comparables) and for a property next door to the Subject Property located at 5101 Jackson Street, Omaha, Nebraska (5101 Jackson).
27. The Taxpayer also provided printouts of a webpage titled "GPS Coordinates" to show the distances between the Subject Property and the Taxpayer's Comparables are all within 0.26 miles, plus various tables of assessment information compiled by the Taxpayer to compare properties.
28. The PRF provided by the Taxpayer for 5101 Jackson shows that property is also a two-and-one-half story, single-family residence built in 1923. That property has four bedrooms and two bathrooms. The first floor is 1,266 square feet and the second floor is 910 square feet. The third floor is not finished living space. For tax year 2025, 5101 Jackson had a quality rating of "good" and a condition rating of "average."
29. Both the Subject Property and 5101 Jackson have frame masonry veneer siding construction types.
30. The Taxpayer alleged in a written narrative provided with the appeal form that the Subject Property's value was increased by $133,500 to either match or exceed the 2025 increase in the valuation of 5101 Jackson.
31. The Taxpayer also alleged that 5101 Jackson is not comparable to the Subject Property because the owners of Taxapyer's Comparable 1 had an approximately 342-square-foot-addition built in recent years. The PRF for 5101 Jackson makes no mention of a recent addition. However, the floorplan does show a section of the first floor which is 18 feet by 19 feet, or 342 square feet. Thus, the Taxpayer has presented competent evidence that 5101 Jackson is not comparable to the Subject Property.

32. The assessed value for real property may be different from year to year according to the circumstances.[16] For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.[17] Similarly, prior assessments of other properties are not relevant to the subsequent assessment.[18]
33. Thus, the amount of the increase in the 2025 valuation of 5101 Jackson from 2024 is not relevant to the amount of the increase in the Subject Property's 2025 valuation from 2024.
34. Further, the Subject Property's PRF shows its assessment was based on the cost approach to mass appraisal. The same is true for 5101 Jackson.
35. Nothing in the PRFs for the Subject Property or 5101 Jackson indicate the Subject Property's 2025 value was increased to match or exceed the valuation of 5101 Jackson.
36. The Taxpayer also argues that the Subject Property's value is not equalized with other similar properties.
37. "If a taxpayer's property is assessed at a value in excess of its actual value, or in excess of that value at which others are taxed, then the taxpayer has a right to relief."[19]
38. "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."[20]
39. Along with the PRFs for the Taxpayer's Comparables and 5101 Jackson, the Taxpayer provided a table showing the assessed values of all the properties presented and their assessed values per square foot.

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[16] *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).
[17] *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).
[18] *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).
[19] *Lancaster Cty. Bd. of Equalization v. Moser*, 312 Neb. 757, 789, 980 N.W.2d 611, 632 (2022) (citations omitted).
[20] *Scribante v. Douglas County Board of Equalization*, 8 Neb. App. 25, 39, 588 N.W.2d 190, 199 (1999).

40. The breakdown in the Taxpayer's table was performed for both land and improvements but does not account or adjust for different "add-ons" or features between properties. As such, the Taxpayer's table does not conform to professionally accepted methods of mass appraisal and the Commission gives it little weight.
41. The Taxpayer alleges this information shows the Subject Property is assessed more per square foot than the Taxpayer's Comparables.
42. However, each of the PRFs for the Taxpayer's Comparables show the Taxpayer's Comparables are in different neighborhoods than the Subject Property.
43. The Subject Property's neighborhood is the "Richmond Addition" according to the PRF. The Taxpayer's Comparables are located in either the "Lockwood Addition" or "Dundee Place" neighborhoods according to their PRFs.
44. Of all properties presented, only 5101 Jackson is in the same neighborhood. As stated above, this property is not comparable to the Subject Property due to the addition.
45. Merely because evidence is admissible "does not automatically lead to the conclusion that such evidence constitutes competent evidence *contrary to the presumption*. That determination involves considering not only whether the taxpayer presented admissible evidence but specifically whether the substance of the evidence presented by the taxpayer was competent to rebut the presumption that the Board faithfully performed its duties and had sufficient competent evidence to make its determinations."[21]
46. The Taxpayer presented no information to quantify the relative quality and condition differences, if any, among the different neighborhoods.

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[21] *Betty L. Green Living Tr. v. Morrill Cty. Bd. of Equalization*, 299 Neb. 933, 948, 911 N.W.2d 551, 561 (2018) (emphasis added).

47. Although the PRFs provided contain different cost information for the different properties, they do not show that the cost information for the Subject Property is incorrect.
48. Finally, the Taxpayer stated at the hearing that the Subject Property is more like the Happy Hollow neighborhood located to the west of the Subject Property and that County Assessor's neighborhood lines are arbitrary.
49. The Taxpayer presented no properties from Happy Hollow or other information to support the assertion that the County Assessor's neighborhood lines are arbitrary.
50. 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.
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.

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:

Land	$ 25,300
Improvements	$442,100
Total	$467,400

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 2025.
7. This Decision and Order is effective on August 6, 2026.

SIGNED AND SEALED: August 6, 2026.

SEAL

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James D. Kuhn, Commissioner