NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 25-003 — July 18, 2025

OPINION FOR THE COUNTY ATTORNEY OF WASHINGTON COUNTY

Liability for Non-Consensual, Warrantless Entries on Private Property by County Assessors

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Summary: County tax assessors are not exempt from the general law of trespass. A county tax assessor who enters private property without consent or a warrant therefore exposes himself to potential liability. Moreover, a county tax assessor who enters a home, or its immediately surrounding area, without a proper search warrant conducts an unreasonable search in violation of the United States and Nebraska Constitutions.

You have requested our opinion on whether a county tax assessor and his employees are liable in trespass when they either step foot on private property or enter a private person's home. You refer to instances when officials entered private property despite "no trespassing signs" in plain view, and when they entered partially constructed residences being rebuilt after destruction by a tornado.

Your request references a 1977 attorney general opinion. 1977–78 Rep. Att'y Gen. 166–67. That opinion addressed only whether a county tax assessor, or his employees, may enter property—not homes—without trespass liability. Despite acknowledging that other state laws expressly exempt officials from trespass liability while Nebraska does not, the then-attorney general concluded that assessors are not liable. He did so based solely on the idea that these intrusions are necessary to properly exercise assessors' duty to equalize property

values for tax purposes, and that trespass laws do not apply to officials acting within the scope of that duty. The opinion also suggested that a county assessor can obtain an "inspection warrant," which must "relat[e] to health, welfare, fire or safety," Neb. Rev. Stat. § 29-830—even though property tax assessments relate to none of those things. You believe that the opinion is flawed. We agree.

The Nebraska Legislature has not exempted county tax assessors from the general law of trespass. We therefore decline to follow the 1977 attorney general opinion's contrary analysis. Moreover, entering a residence without a warrant to gather revenue-raising information is an unreasonable search in violation of both the United States and Nebraska Constitutions.

I.

We first consider the laws of trespass, then we consider whether county assessors or their employees are exempt from those laws. Finally, we explain why a previous attorney general opinion on this subject is incorrect.

A.

Private property protection pre-dates the American Founding. Citizens enjoyed strong property rights under the English common law. The English recognized that government exists in part to protect private property: "The great end, for which men entered into society, was to secure their property." *Entick v. Carrington and Three Other King's Messengers*, 19 How. St. Tr. 1029, 1066 (C.P. 1765); *see also* John Locke, *The Second Treatise of Civil Government and a Letter Concerning Toleration* § 134 at 66 (Blackwell 1948) (J.W. Gough, ed) ("The great end of men's entering into society being the enjoyment of their properties in peace and safety[.]").

Liability from Tax Assessors' Entries on Private Property

One critical property right that the English recognized was the right to exclude. English jurist William Blackstone thought that the very idea of property entails "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 W. Blackstone, Commentaries on the Laws of England 2 (1766).

The law of trespass emerged to reinforce property owners' exclusionary rights. "[E]very invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil." *Entick*, 19 How. St. Tr. at 1066.

These principles were reinforced at the American Founding. The Founders balked at the "intrusive" property searches that Parliament authorized. *Morgan v. Fairfield Cnty.*, 903 F.3d 553, 568 (6th Cir. 2018) (Thapar, J., concurring and dissenting in part). For instance, "Charles Paxton, a famous 'Surveyor and Searcher' in Massachusetts, was permitted to enter into any ship, vessel, shop, house, warehouse, or other place 'to make diligent search into any trunk[,] chest[,] pack[,] case[,] truss[,] or any other parcel or package whatsoever.'" *Id.* at 569 (quoting Josiah Quincy, Jr., *Reports of Cases Argued and Adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay Between 1761 and 1772* at 420 (Boston, Little, Brown & Co. 1865)). Many Founders "complained that 'their houses and even their bed chambers, were exposed to be ransacked,' and their 'boxes, chests & trunks broke open, ravaged and plundered.'" *Id.*

(quoting Leonard Levy, *Origins of the Bill of Rights* 166 (1992)) (cleaned up).

The Founders' experiences inspired them to include numerous property protections in the United States Constitution. The Constitution explicitly protects private property from being deprived without due process and just compensation, U.S. Const. Amends. V, XIV, and protects individuals from unreasonable searches and seizures, U.S. Const. Amend. IV. As the Supreme Court later observed, the private-property principles that the English recognized in *Entick*, "regarded as settled from that time to this," were "considered as the true and ultimate expression of constitutional law ... [by] those who framed the fourth amendment to the constitution."[1] *Boyd v. United States*, 116 U.S. 616, 626 (1886).

What is true at the federal level is also true in Nebraska. The Nebraska Constitution states that "[a]ll persons are by nature free and independent," that they "have certain inherent and inalienable rights," and that government exists "[t]o secure these rights, and the protection of property." Neb. Const. art. I, § 1. The Nebraska Constitution explicitly protects private property from being deprived without due process and just compensation, Neb. Const. art. I, §§ 3, 21, and it prevents the government from discriminating between citizens "in respect to the acquisition, ownership, possession, enjoyment or descent of property[,]" Neb. Const. art. I, § 25.

The Nebraska Revised Statutes provide additional protection against trespass. Specifically, the Revised Statutes include criminal trespass, Neb. Rev. Stat. § 28-520, and invasion of privacy, Neb. Rev. Stat. § 20-203 ("Any

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[1] There is considerable overlap between the law of trespass and the Fourth Amendment to the United States Constitution. This section discusses the law of trespass; we review further constitutional implications below.

person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy.").

Further, under Neb. Rev. Stat § 49-101 the Legislature has mandated the adoption of the "common law of England" unless the common law is "inconsistent" with the United States Constitution, the Nebraska Constitution, or other codified Nebraska laws. In Nebraska, under the common law, a person may be liable at law or equity for the tort of trespass if he "intentionally enters land in the possession of another, or causes a thing or third person to do so." *Obermiller v. Baasch*, 284 Neb. 542, 558 (2012).

B.

Nebraska's trespass laws do not distinguish between the identity of the alleged trespasser. Indeed, as reviewed above, many of these laws evolved in direct response to government officials' trespasses.

The Nebraska criminal trespass statute makes it a first-degree criminal trespass for a "person" to "enter[] or secretly remain[] in any building or occupied structure, or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so." Neb. Rev. Stat. § 28-520(1)(a). Similarly, it is second-degree criminal trespass for a "person" to "enter[] or remain[] in any place as to which notice against trespass is given by" actual communication, posting, or fencing designed to exclude intruders, knowing that he or she is "not licensed or privileged to do so." *Id.* § 28-521(1). Both statutes identify the trespasser as a "person," which is all-encompassing: "any natural person." *Id.* § 28-109(17). It even includes persons created by legal fiction: "a corporation or an unincorporated association" when

relevant. *Id.*[2] Neither statute exempts government employees from this definition.

And the Legislature knows how to exempt governmental officials from a statute's scope, but it has not here. For example, the Legislature explicitly gave county surveyors immunity from prosecution for trespass. Neb. Rev. Stat. § 23-1906. And state surveyors, *id.* § 84-411, and surveying officials in the Department of Transportation, *id.* § 39-1324, are explicitly excepted from trespass tort liability.[3] Several other statutes provide some protection from trespass liability for certain officials for specific purposes. *See, e.g.*, Neb. Rev. Stat. § 2-3232 (natural resource districts); *id.* § 15-229 (eminent domain); *id.* § 37-707 (Game and Parks Commission); *id.* § 31-1017

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[2] This opinion does not evaluate whether various immunities available to the State or its officials apply and shield them from liability. This opinion only evaluates whether a civil or criminal action in trespass, at the threshold, applies to conduct by government officials.

[3] The 1977 attorney general opinion on this subject quoted a Massachusetts case that justified entries "by commissioners to survey the bounds of a public landing place, by selectmen to run boundary lines and renew marks, and by county commissioners to view and survey proposed highways." *Thurlow v. Crossman*, 143 N.E.2d 812, 813–14 (Mass. 1957). That case does not prove the broader proposition that county tax assessors may enter private property without trespass liability. In contrast to county tax assessors, the Legislature has exempted by statute those surveying officials from trespass liability. We do not evaluate here whether that exemption is valid, but such an exemption does not exist for tax assessors. Furthermore, surveyors are narrowly focused on demarcating property boundaries which occur on the outer boundaries of property. That is a much narrower focus than open-ended searches for revenue-raising information. Most importantly, surveys serve to protect property owners who benefit from properly demarcated lines. A property owner only knows where his property begins, and another's ends, in reliance on accurate surveys—a form of implicit, in-kind compensation to the property owner.

(Department of Natural Resources); *id.* § 81-2,281 (Department of Agriculture). Despite those many exceptions, none exists for county assessors.[4]

Nor can county assessors claim, as a general matter, common law exceptions to trespass. As far back as *Entick*, the King's Bench noted that an intrusion was not a trespass if the defendant could "sh[o]w the law" under which the trespass was "warranted," which includes scenarios where "every man by common consent gives up" a property right. 19 How. St. Tr. at 1066 (holding that four of the King's messengers who broke into the home of an author, John Entick, to search for ostensibly seditious papers was a trespass in tort law). For example, a trespasser may avoid liability if he or she engages in trespass out of necessity.

The Nebraska Legislature has codified this doctrine as the "choice of evils" defense. Neb. Rev. Stat. § 28-1407. It requires one accused of trespass to demonstrate he "(1) act[ed] to avoid a greater harm; (2) reasonably believe[d] that the particular action [was] necessary to avoid a specific and immediately imminent harm; and (3) reasonably believe[d] that the selected action [was] the least harmful alternative to avoid the harm, actual or reasonably believed by the defendant to be certain to occur." *State v. Cozzens*, 241 Neb. 565, 571 (1992). The doctrine of necessity thus could allow, in some circumstances, government employees to commit what

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[4] We take no position on whether those exceptions validly abrogate trespass liability without a warrant, and if so the proper scope of each exception, but we do highlight them to show that county assessors lack even the Legislature's desire to override trespass law. Moreover, even if any statute exempted officials from common law trespass liability, it would not exempt officials from liability for invasion of privacy should it apply. *See* Neb. Rev. Stat. § 20-203.

would otherwise be a trespass if doing so prevents a different, more severe harm.

But we do not believe the need to value property for taxation creates such a choice. The notion that county assessors must be permitted to enter private property to carry out their duties is belied by history. It was not until 2007 that the Legislature even demanded that assessors conduct an open-ended "inspection" of property. *See* L.B. 334, § 100, 100th Leg., 1st Sess. (2007) (enacted); Neb. Rev. Stat. § 77-1311.03 ("The county assessor shall ... assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years."). But even that law did not authorize county tax assessors to enter onto private land or exempt them from trespass liability.

Regulations implementing Section 77-1311.03 confirm that inspections do not require trespass. While regulations define "inspection" as "the in-person review or examination of property," 350 Neb. Admin. Code Ch. 50, § 001.19, nothing requires that the inspection be performed in a particular manner. All the regulations require is that "[t]he inspection process ... take place within *view* of the *property* being inspected." 350 Neb. Admin. Code Ch. 50, § 002.03B (emphasis added). Thus, nothing in law or regulation suggests that an "inspection" of parcels in person requires trespass or necessarily overrides the laws governing trespass.

County tax assessors have plenty of other ways to fulfill their duties. They can, for example, make an in-person inspection from a public area within view of private property, but not on the private property itself. And they can conduct a more in-depth, up-close inspection with the consent of the property owner. Both avenues are inspections, yet neither give rise to trespass liability. Indeed, we have no reason to believe that tax assessors in

other states cannot fulfill their duties even when they have been overtly prohibited from entering private property to perform their duties. *See infra* pp. 12–13 (explaining other states' approaches). There is nothing unique about Nebraska that requires its assessors to act differently.

Aside from the doctrine of necessity, what otherwise would be trespass could also be justified by a warrant supported by probable cause. *See Irvine v. California*, 347 U.S. 128, 132 (1954) ("[E]ntries of petitioner's home without a search warrant or other process was a trespass."). No person has a "right to do a wrong." *See* Abraham Lincoln, *Sixth Debate with Stephen Douglas, at Quincy, Illinois* (Oct. 13, 1858), *in* 3 The Collected Works of Abraham Lincoln 245, 257 (Roy P. Basler ed., 1953).[5] A valid warrant would give a government official permission to enter onto private property, even without the owner's consent.

But that permission is not lightly given. Obtaining it requires the government official to provide proof to a neutral magistrate that demonstrates particularized suspicion that something unlawful exists in a particular place. *See Johnson v. United States*, 333 U.S. 10, 13–14 (1948); *accord State v. Edmonson*, 257 Neb. 468, 477 (1999). *See also Entick*, 19 How. St. Tr. at 1067 ("There must be a full charge upon oath of a theft committed. The owner must swear that the goods are lodged in such place. He must attend at the execution of the warrant to show them to the officer, who must see that they answer the description. And, lastly, the owner must abide the event at his peril. For if the goods are not found, he is a trespasser; and the officer being an innocent person, will be always a ready an convenient witness against him."). We know of no

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[5] *See also* 2 James Wilson, *Of the Natural Rights of Individuals*, *in* The Works of James Wilson 587 (1967) (warning it is not "part of natural liberty ... to do mischief to anyone").

statute or Nebraska-specific principle of either criminal or civil law that sidesteps that process and gives a blanket exemption from the law of trespass to government employees.

An unjustified and nonconsensual intrusion on private property to obtain information relevant to taxation is far afield from these common-law exceptions. Like a tax collector, a tax assessor is "to almost all people an unwelcome messenger." *Cunningham v. Mitchell*, 67 Pa. 78, 82 (Pa. 1871). If a county tax assessor possessed such broad powers—to enter and examine a citizen's entire property or home without specific justification—the office would effectively claim authority resembling the general writs of assistance detested by the Framers. *See Payton v. New York*, 445 U.S. 573, 583 n.21 (1980) ("The hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of British tax laws. They were denounced by James Otis as 'the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law.'") (quoting *Stanford v. Texas*, 379 U.S. 476, 481–82 (1965)). *See also Entick*, 19 How. St. Tr. at 1067 (describing the information necessary to justify a warrant).

That general, warrantless searches by property tax assessors could uncover reason to *penalize* taxpayers only strengthens the comparison to the Founding Era's writs of assistance. Nebraska property owners are required to notify county assessors of all improvements over $2,500 made to property. *See* Neb. Rev. Stat. § 77-1318.01(1). Property owners must either obtain a building permit or file an "information statement" with the county assessor. That "information statement" must contain detailed information, such as the "(a) Name and address of the owner of the property; (b) name and address of the applicant, if different than owner; (c) name of prime

contractor for the project, if there is one; (d) location of the property, size, nature, intended use, and approximate material cost of the improvement; and (e) the estimated period of construction." *Id.* § 77-1318.01(3). If a property owner neglects to obtain a building permit or fails to file (or files late) an information statement, he could face a significant tax penalty. *See id.* § 77-1318. If allowed to enter private property unwarranted, a government official (like a tax assessor) could embark on an open-ended fishing expedition to ultimately collect more taxes or punish any form of evasion, intentional or unintentional. That regime strengthens the comparison between general searches by county tax assessors and general searches for illegal, or taxable, material that the Framers detested. *See Stanford*, 379 U.S. at 482 ("[T]he Fourth Amendment was most immediately the product of contemporary revulsion against a regime of writs of assistance.").

C.

We have considered the 1977 attorney general opinion's contrary conclusions. We conclude that they are wrong.

The 1977 attorney general opinion assumed, without explanation, that a county assessor's duty "cannot be done properly" without a trespassory inspection. 1977–78 Rep. Att'y Gen. 167. That assumption is not correct. The Nebraska Constitution's requirement that taxes be levied by valuation uniformly and proportionately upon all real property in the State does not require government officials to trespass. *See* Neb. Const. art. VIII, § 1(1). Indeed, as outlined above, entering property is not necessary to ensure "the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value" as compared to its actual, market value. *Lancaster Cnty. Bd. of Equal. v. Moser*, 312 Neb. 757, 774 (2022). And it is doubtful, with all the information available to assessors,

that without entering property, a property owner's valuation will surely become "arbitrary or capricious, or so wholly out of line with actual values as to give rise to an inference that the assessor and county board of equalization have not properly discharged their duties." *Id.*

Contrary to the conclusion reached by the prior opinion, 1977–78 Rep. Att'y Gen. 166, these requirements do not even necessitate an in-person inspection at all. The same goes for the county assessors' duty to regularly correct and update the assessment of real property. Neb. Rev. Stat. § 77-1314. All the above duties of the assessor can be fulfilled by a combination of alternatives that the assessors already take advantage of, such as collecting data through the information statements discussed above, questionnaires, digital images, satellite images, land use maps, and property sales records. *See, e.g.,* 350 Neb. Admin. Code Ch. 50, § 002. And county assessors can make an in-person inspection of parcels from public places or seek the consent of property owners to inspect properties more closely.

There is no evidence that in those states that prohibit nonconsensual entries of tax assessors to private property tax assessors have been unable to exercise their duties. And many states have that prohibition. *See Milewski v. Town of Dover*, 899 N.W.2d 303, 322 (Wis. 2017) (prohibiting); *Atkinson v. Gurich*, 248 P.3d 356, 360 (Okla. 2011) (prohibiting) ("There is no information to be gained by entering the taxpayer's home that is necessary for a fair market valuation. Even if the inside of the taxpayer's home is lavish it is likely that the home would just be over-built for the area and the taxpayer would have invested more into the home than its fair market value."); *Parnoff v. Town of Stratford*, 2018 WL 10094272, at *2 (Conn. Super. Ct. Nov. 26, 2018) (prohibiting); *Jacobowitz v. Bd. of Assessors for Town of Cornwall*, 121 A.D.3d 294, 301 (N.Y. App. Div. 2014); *State, ex rel. Holcomb, v. Wurst*,

579 N.E.2d 746, 749 (Ohio App. 1989) (prohibiting); N.M. Stat. § 7-38-2 (requiring consent). At least three other states permit homeowners to refuse entry of tax assessors to their private property. *See* Nev. Rev. Stat. § 361.360 (permitting homeowner to refuse entry); Mont. Code § 15-7-139 (same); Tenn. Code § 67-5-303 (same); Miss. Code § 27-1-23 (explicitly prohibiting warrantless entries of homes). At least two other states either prohibit, or require consent, for tax assessors to enter homes. *See* Mo. Stat. § 137.115 (requiring consent for interior inspection); Ky. Rev. Stat. § 132.220 (requiring consent for interior inspection unless building is not yet occupied); Alaska Statute § 29.45.130(b) (same). At least one other state permits some entries onto private property, but it requires reasonable notice to the homeowner. *See* Ga. Code § 48-5-264.1. None of these states, to our knowledge, exempt officials from the laws of trespass. And most states, like Nebraska, do not require tax assessors enter private property to exercise their functions or exempt tax assessors from the laws of trespass. In all those states, though, we have no reason to believe that tax assessors have difficulty assessing property values with the multiple tools available to them. One state expressly acknowledges that if "a landowner or the landowner's agent prevents" an assessor from entering his other property, the assessor can nonetheless "estimate the value of the real and personal property located on the land." Mont. Code § 15-7-139.

The prior attorney general opinion also incorrectly suggested that county assessors may obtain inspection warrants under Neb. Rev. Stat. §§ 29-830 to 29-835. Such inspection warrants are only permitted if an "inspection [is] required or authorized by state or local law or regulation relating to health, welfare, fire or safety." *Id.* § 29-830. But a government official in search of revenue-raising information is not acting in the interest of health, welfare, fire, or safety. He is instead acting in the interest of the government assessing property to tax. Not to

mention, a general warrant that permits government officials to embark on an open-ended search of revenue-raising information is the sort of warrant that, under the common law, fails to trump trespass laws. *See, e.g., Entick*, 19 How. St. Tr. 1029. Thus, contrary to the prior attorney general opinion, this specific warrant is unavailable to assessors.

Moreover, the prior attorney general opinion made short shrift of the Legislature's exemption of many other government officials from trespass when exercising their official functions. *See supra* pp. 6–7. We conclude this to be a material error. The Legislature has *never* exempted county assessors or their employees of trespass liability in the exercise of their official duties, and the extension of such an exemption to other county officials, but not to assessors, is dispositive.

Finally, the 1977 attorney general opinion relies on the Corpus Juris Secundum, 87 C.J.S. 1006, Trespass, § 54, for the proposition that county assessors are not liable in trespass so long as they act according to their statutory duties. The passage the opinion quotes essentially states that government officials may justify otherwise trespassory acts so long as those officials are carrying out their duties.[6] But the passage emphasizes each particular intrusion must have a particularized justification by an official. The passage does not *supply* the specific justifications. As we discussed above, an official could be justified by necessity, the execution of a valid warrant, or consent. But the officer's on-duty status is not a justification in and of itself. If police officers were justified

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[6] *See* 87 C.J.S. 1006, Trespass, § 54 ("A rule of general recognition is that one acting under authority from the government may justify acts which otherwise would be trespass, but it must appear that the authority in fact existed, and that it was valid, and that it justified the method employed to carry out the authority, the particular act done, and the doing of it by defendant.").

by simply acting as police officers, they would never need a warrant to search any place or probable cause to arrest any person.

Thus, the C.J.S.'s rule does not supply the conclusion the prior attorney general opinion suggested it did. Instead, justifications must be independent of the official's general duty.

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Trespass liability lies against county assessors who enter private property without justification. The 1977 attorney general opinion to the contrary was incorrect in its reasoning and conclusion.

II.

A.

The common-law trespass rules overlap with the United States and Nebraska Constitutions' prohibition of unreasonable searches. Under either constitution,[7] a county assessor who enters a home or its surroundings without a warrant to assess tax information engages in an unreasonable search.

A "search" is "to look into or over carefully or thoroughly in an effort to find something." *Webster's Third*

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[7] In the realm of search and seizure, our Supreme Court has held that the Nebraska Constitution provides no greater protection than is found in the United States Constitution, so we analyze both together unless in a material respect the decisions under the Nebraska Constitution are more limited. *See State v. Vermuele*, 234 Neb. 973, 980 (1990) ("[T]he framers of the Nebraska Constitution intended that article I, § 7, provide no greater rights than those afforded a defendant by the 4th and 14th amendments to the U.S. Constitution."); *see also State v. Smith*, 279 Neb. 918, 922 (2010).

New International Dictionary of the English Language (2002); *see also* 2 Noah Webster, *An American Dictionary of the English Language* 66 (1828) (reprint 6th ed. 1989) ("To look over or through for the purpose of finding something; to explore; to examine by inspection; as, to search the house for a book; to search the wood for a thief."). "In other words, officers conduct a search when they engage in a purposeful, investigative act." *Morgan*, 903 F.3d at 568 (Thapar, J., concurring in part). That is exactly what tax assessors do—they enter onto property to "engage in a purposeful, investigative act."

The United States Supreme Court, relying on *Entick*, found a close connection between searches under the Constitution and unjustified trespass. *See United States v. Jones*, 565 U.S. 400, 405 (2012) (quoting *Entick*). Applying the trespass principles discussed above, the United States Supreme Court held in *Jones* that when "[t]he Government physically occupied private property for the purpose of obtaining information," it "no doubt" was "a 'search' within the meaning of the Fourth Amendment when it was adopted." *Id.* at 404–05; *see also State v. Jenkins*, 294 Neb. 684, 699 (2016) (quoting *Jones*). County tax assessors who enter a home seeking information no doubt conduct a search. *See, e.g.*, *Jones*, 565 U.S. at 408 n.5 (explaining that a trespass "is not alone a search unless it is done to obtain information").

Moreover, the county tax assessor's broad task to generally examine the entire home to find revenue-raising information without any specific justification or specific scope resembles the general writs of assistance detested by the Framers. *See supra* pp. 3–5, 10–11. Those writs were often used not only to find evidence of criminal wrongdoing as in *Entick* but also to search for "goods imported in violation of British tax laws." *Stanford*, 379 U.S. at 481. If during an assessor's search of a home he discovers the owner failed to file an "information statement," or obtain a

building permit, for any improvements made to the property over $2,500, Neb. Rev. Stat. § 77-1318.01(1), the owner could face a significant tax penalty on top of an increased taxable value. *See id.* § 77-1318. That puts the conduct at issue in this opinion request even more squarely in the core prohibition of the Fourth Amendment. After all, "one of the primary evils intended to be eliminated by the Fourth Amendment was the massive intrusion on privacy undertaken in the collection of taxes pursuant to general warrants and writs of assistance." *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 355 (1977).

Both constitutions protect only certain enumerated items from searches: "persons, houses, papers, and effects." U.S. Const. Amend. IV; Neb. Const. art. I, § 7.[8] Both constitutions consider "houses" to encompass both the home itself and the associated surrounding areas (known as "curtilage"). *See Florida v. Jardines*, 569 U.S. 1, 6 (2013); *City of Beatrice v. Meints*, 289 Neb. 558, 573 (2014). So, under both constitutions, setting foot in or around a home, finished or not, is an unreasonable search absent a warrant supported by probable cause.

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[8] *See also* Richard A. Epstein, Entick v. Carrington *and* Boyd v. United States: *Keeping the Fourth and Fifth Amendments on Track*, 82 U. Chi. L. Rev. 27, 34 (2015) ("Consistent with [the case's] Lockean bent, [the *Entick* case] applied the standard common-law trespass rules. These rules cover all forms of property, both real and personal, without distinction. Land, goods[,] and chattels are all covered by the limitation on governmental power to the full extent of their loss. In contrast, the Fourth Amendment does not use the capacious term property. Instead, it contents itself with a list of four items, two of which cover the actual objects of search in *Entick*: persons, houses, papers, and effects.") (internal quotation marks omitted); *id.* at 35 ("It is an open question whether these word choices—which narrow the scope of the Fourth Amendment—were a product of conscious design or something less. Perhaps the drafters were content with addressing major abuse, leaving analogous situations to be dealt with at some later day.").

Inspections of partially constructed portions of homes being rebuilt after a tornado are protected, too. "So long as it is curtilage, a parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage." *Collins v. Virginia*, 584 U.S. 586, 600 (2018).

That an assessor performs a search of a protected area does not end the inquiry. Both constitutions forbid not searches generally but *unreasonable* ones. The "ultimate touchstone of the Fourth Amendment is reasonableness." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). And without a warrant, a government official's search of a home or its curtilage is presumptively unreasonable and therefore unconstitutional. "It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton*, 445 U.S. at 586; *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals."); *Kyllo v. United States*, 533 U.S. 27, 37 (2001) ("[A]ny physical invasion of the structure of the home, by even a fraction of an inch, [i]s too much.") (internal quotation marks omitted); *State v. Eberly*, 271 Neb. 893, 899 (2006) ("[T]he Fourth Amendment has drawn a firm line at the entrance to the house.") (quoting *Payton*, 445 U.S. at 590). A county tax assessor's interior inspection is not necessarily a trivial intrusion. It can include "entering the buildings to inspect the interior details and condition of the interior components." 350 Neb. Admin. Code Ch. 50, § 001.19B. The tax assessor might very well inspect especially private spaces as bedrooms and bathrooms. He might even take photographs of the same. *Id.* § 001.17. *Cf. Kyllo*, 533 U.S. at 37 ("In the home ... *all* details are intimate details.") (emphasis in original).

Liability from Tax Assessors' Entries on Private Property

The state's interest in collecting taxes, or properly determining taxable values, does not justify warrantless intrusions. The Supreme Court has already held as much. *See G. M. Leasing Corp.*, 429 U.S. at 358 ("[W]e are unwilling to hold that the mere interest in the collection of taxes is sufficient to justify a statute declaring per se exempt from the warrant requirement every intrusion into privacy made in furtherance of any tax seizure."). More than "[t]wo centuries have passed since the historic decision in *Entick v. Carrington*. ... But the Fourth and Fourteenth Amendments guarantee to [each Nebraskan] that no official of the State shall [search] his home ... under the unbridled authority of a general warrant—no less than the law 200 years ago shielded John Entick from the messengers of the King." *Id.* at 486.

Without consent, county assessors need a warrant to enter homes and areas around them. Otherwise, they engage in an unreasonable search under the federal and state constitutions. At least two other state supreme courts agree with our conclusion. *See Milewski v. Town of Dover*, 899 N.W.2d 303, 325 (Wis. 2017) ("A tax assessor's inspection of a home's interior is a search within the meaning of the Fourth Amendment, and so it is presumptively unreasonable—and therefore unconstitutional—in the absence of a warrant."); *Atkinson v. Gurich*, 248 P.3d 356, 360 (Okla. 2011) ("The county assessor would have to enter every comparable home to compare interior features, which would contravene the rationale behind the [F]ourth [A]mendment.").

B.

We answer two other questions prompted by our conclusion. *First*, county tax assessors cannot seek administrative warrants currently made available by Nebraska statute. *Second*, were the Legislature to permit warrants for tax assessment inspections, the particular

facts required for a warrant would differ from other contexts.

The United States Supreme Court has required warrants for administrative inspections because they "are significant intrusions upon the interests protected by the Fourth Amendment, that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual." *Camara v. Mun. Court of City & Cnty. of San Francisco*, 387 U.S. 523, 534 (1967). In response to *Camara*, the Nebraska Legislature "enacted a series of statutes governing the issuance of administrative inspection warrants." *State v. Anderson*, 317 Neb. 435, 440 (2024) (citing Neb. Rev. Stat. §§ 29-830 to 29-835). As we discussed above, though, this administrative warrant process permits warrants only for searches related to "health, welfare, fire[,] or safety." *Id.* Neb. Rev. Stat. § 29-830. Unrestricted searches for revenue-raising information are not by nature in the interest of health, welfare, fire, or safety. Those administrative warrants are thus unavailable to county tax assessors.

Were the Legislature to establish a process for county tax assessors to obtain warrants, the assessors would need particularized facts to show an inspection of a particular place is necessary. *See, e.g., Milewski*, 899 N.W.2d at 320 ("The Town does not say there is anything peculiar about the Milewskis' home that requires an interior inspection."); *State v. Carter*, 733 N.W.2d 333, 338 (Iowa 2007) (setting forth an example of factual elements that would support probable cause for an administrative warrant for certain state tax officials). Probable cause is context-dependent, as was the case in *Camara* which considered probable cause alongside "considerations of health and safety." *Camara*, 387 U.S. at 538.

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County tax assessments do not consider health and safety. Instead, a county assessor would need to have probable cause that a particular improvement or deterioration in a particular place will change the property's taxable value. And for property improvements, under current Nebraska law, he must show a property owner failed to notify him (by permit or information statement) within the year the improvement worth more than $2,500 was made. Neb. Rev. Stat. § 77-1318.01. Once probable cause exists, "[a]s in *Camara,* the warrant will also perform the salutary function of advising the homeowner of the lawful basis for the inspection of his home, describing the search's proper limits, and identifying the assessor as one with authority to search." *Milewski,* 899 N.W.2d at 325.

Finally, we emphasize again that the county tax assessors' inspections can be conducted from public areas or by obtaining the owner's consent. Observations of private property from adjacent public areas does not likely violate the Fourth Amendment. *See, e.g., City of Beatrice v. Meints,* 289 Neb. 558, 574, 856 N.W.2d 410, 421 (2014) ("We conclude that Meints did not have a reasonable expectation of privacy in his ... lot and its contents ... visible from a public road to all who wanted to see and even to some who did not want to see (e.g., Meints' neighbors)."). Not to mention county tax assessors have access to a wide variety of information that allows them to arrive at accurate assessments without stepping foot in a home or its curtilage.

III.

County tax assessors are liable in trespass for non-consensual, warrantless entry on private property. Warrantless inspections around and in homes would violate the United States and Nebraska Constitutions'

prohibitions of unreasonable searches without probable cause.

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