

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

BERNARD J. MORELLO
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NOS: 19A 0205, 19A
0217 & 20A 0236;
19A 0203, 19A 0218 & 20A
0237;
19A 0216 & 20A 0239;
19A 0202 & 20A 0240;
19A 0219 & 20A 0238

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

CASE NO: 19A 0204

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

For the Appellant:

Bernard J. Morello,
Pro Se

For the Appellee:

Jimmie Pinkham,
Deputy Douglas County
Attorney

These appeals were heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Taxpayer filed 13 appeals involving five parcels of property in Douglas County. Three of the appeals concerned the reporting of destroyed real property.

The Subject Property in Case Nos 19A 0205, 19A 0217 and 20A 0237 is a 106.82-acre parcel located in Douglas County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibits 14, 15 and 19. This parcel has a PID number of 114400002 and an FSA Tract number of 4728 (hereinafter Tract 4728).

The Subject Property in Case Nos. 19A 0203, 19A 0218 and 20A 0236 is a 74-acre parcel located in Douglas County, Nebraska. The legal description and PRF of this Subject Property are found in Exhibits 16, 17, and 18. This parcel has a PID of 110890000 and an FSA Tract number of 4730 (hereinafter Tract 4730).

The Subject Property in Case Nos. 19A 0204, 19A 0216 and 20A 0239 is a 163.83-acre parcel located in Douglas County, Nebraska. The legal description and PRF of this Subject Property are found in Exhibits 20, 21, and 22. This parcel has a PID of 113280006 and is part of an FSA Tract number of 4729 (hereinafter Tract 4729A)¹.

The Subject Property in Case Nos 19A 0202 and 20A 0240 is 103.19-acre parcel located in Douglas County, Nebraska. The legal description and PRF of this Subject Property are found in Exhibits 23 and 24. This parcel has a PID of 110540003 and an FSA Tract number of 4731 (hereinafter Tract 4731).

The Subject Property in Case Nos 19A 0219 and 20A 0238 is a 16-acre parcel located in Douglas County, Nebraska. The legal description and PRF of this Subject Property are found in Exhibits 25 and 26. This parcel has a PID of 113320000 and is part of an FSA Tract number of 4729 (hereinafter Tract 4729B)².

¹ The land covered by this tract number encompasses land with two different Property Identification Numbers (PID) in the County Records, this portion containing agricultural land.

² The land covered by this tract number encompasses land with two different Property Identification Numbers (PID) in the County Records, this portion containing land that is

II. PROCEDURAL HISTORY

Tract 4728

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Tract 4728 was \$174,360 for tax year 2019. Bernard J. Morello (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested a taxable value based on different levels of value for different LCG's.³ The County Board determined that the taxable value of Tract 4728 for tax year 2019 was \$174,360.⁴

In July of 2019 the Taxpayer filed a Form 425 Report of Destroyed Real Property for Tract 4728.⁵ The County Board reviewed the Report of Destroyed Real Property and determined that the assessed value was \$174,360 for tax year 2019.⁶ The Taxpayer protested this determination to the County Board and requested a reduction in value of \$101,908.04.⁷ The County Board determined that the taxable value of Tract 4728 for tax year 2019 was \$174,360.⁸

The County Assessor determined that the assessed value of Tract 4728 was \$174,230 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a lower valuation. The County Board determined that the taxable value of Tract 4728 for tax year 2020 was \$100,420.⁹

Tract 4730

The County Assessor determined that the assessed value of the Tract 4730 was \$312,620 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested a taxable value

leased to another party and upon which improvements owned by that party are situated (IOLL or Improvements on Leased Land).

³ E14:17

⁴ E1.

⁵ E15:60

⁶ E15:67

⁷ E15:63

⁸ E2

⁹ E6

based on different levels of value for different LCG's.¹⁰ The County Board determined that the taxable value of Tract 4730 for tax year 2019 was \$312,620.¹¹

In July of 2019 the Taxpayer filed a Form 425 Report of Destroyed Real Property for Tract 4730.¹² The County Board reviewed the Report of Destroyed Real Property and determined that the assessed value was \$312,620 for tax year 2019.¹³ The Taxpayer protested this determination to the County Board and requested a reduction in value of \$8,864.¹⁴ The County Board determined that the taxable value of Tract 4730 for tax year 2019 was \$312,620.¹⁵

The County Assessor determined that the assessed value of Tract 4730 was \$319,090 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a lower valuation. The County Board determined that the taxable value of Tract 4730 for tax year 2020 was \$301,120.¹⁶

Tract 4729A

The County Assessor determined that the assessed value of the Tract 4729A was \$461,580 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested a taxable value based on different levels of value for different LCG's.¹⁷ The County Board determined that the taxable value of Tract 4729A for tax year 2019 was \$461,580.¹⁸

In July of 2019 the Taxpayer filed a Form 425 Report of Destroyed Real Property for Tract 4729A.¹⁹ The County Board reviewed the Report of Destroyed Real Property and determined that the assessed value was \$369,270 for tax year 2019.²⁰ The Taxpayer protested this

¹⁰ E14:17

¹¹ E4.

¹² E18:59

¹³ E18:66

¹⁴ E18:61

¹⁵ E5

¹⁶ E3

¹⁷ E20:26

¹⁸ E7.

¹⁹ E21:29

²⁰ E21:36

determination to the County Board and requested a reduction in value of \$232,015.²¹ The County Board determined that the taxable value of Tract 4729A for tax year 2019 was \$369,270.²²

The County Assessor determined that the assessed value of Tract 4729A was \$503,760 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a lower valuation. The County Board determined that the taxable value of Tract 4729A for tax year 2020 was \$211,150.²³

Tract 4731

The County Assessor determined that the assessed value of the Tract 4731 was \$366,780 for tax year 2019. The Taxpayer protested this assessment to the County Board and requested a taxable value based on different levels of value for different LCG's.²⁴ The County Board determined that the taxable value of Tract 4731 for tax year 2019 was \$366,780.²⁵

The County Assessor determined that the assessed value of Tract 4731 was \$386,770 for tax year 2020. The Taxpayer protested this assessment to the County Board and requested a lower valuation. The County Board determined that the taxable value of Tract 4731 for tax year 2020 was \$386,770.²⁶

Tract 4729B

The County Board determined that the assessed value of the Tract 4729B was \$102,780 for tax year 2019 after the correction of a clerical error.²⁷ The Taxpayer protested this assessment to the County Board and requested a lower taxable value. The County Board determined that the taxable value of Tract 4729B for tax year 2019 was \$102,780.²⁸

The County Assessor determined that the assessed value of Tract 4729B was \$98,240 for tax year 2020. The Taxpayer protested this

²¹ E21:31

²² E8

²³ E9

²⁴ E20:26

²⁵ E10

²⁶ E11

²⁷ See, Case file, Order Finding Jurisdiction.

²⁸ E12

assessment to the County Board and requested a lower valuation. The County Board determined that the taxable value of Tract 4729B for tax year 2020 was \$98,240.²⁹

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on June 10, 2021. Prior to the hearing, the parties exchanged exhibits as ordered by the Commission. Exhibits 1 through 29 were admitted into evidence on stipulation by the parties. The Commission took notice of the Nebraska Department of Revenue Form 425, Report of Destroyed Real Property, which included the instructions located on the back.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.³⁰ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists 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.³¹

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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the

²⁹ E13

³⁰ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³¹ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.³²

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.³³ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.³⁴

The Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.³⁵ 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.³⁶

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. The Commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.³⁷ 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.³⁸ The Commission's Decision and Order shall include findings of fact and conclusions of law.³⁹

³² *Id.*

³³ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

³⁴ *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

³⁵ 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); *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).

³⁶ *Bottorf v. Clay County Bd. of Equal.*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

³⁷ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

³⁸ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

³⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

IV. RELEVANT LAW

Under Nebraska law,

Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.⁴⁰

Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in Neb. Rev. Stat. § 77-1371, (2) income approach, and (3) cost approach.⁴¹ Nebraska courts have held that actual value, market value, and fair market value mean exactly the same thing.⁴² Taxable value is the percentage of actual value subject to taxation as directed by Neb. Rev. Stat. § 77-201 and has the same meaning as assessed value.⁴³ All real property in Nebraska subject to taxation shall be assessed as of January 1.⁴⁴ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.⁴⁵

Agricultural land and horticultural land shall be valued for purposes of taxation at seventy five percent of its

⁴⁰ Neb. Rev. Stat. § 77-112 (Reissue 2018).

⁴¹ Neb. Rev. Stat. § 77-112 (Reissue 2018).

⁴² *Omaha Country Club* at 180, 829.

⁴³ Neb. Rev. Stat. § 77-131 (Reissue 2018).

⁴⁴ See Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

⁴⁵ Neb. Rev. Stat. § 77-201(1) (Reissue 2018).

actual value.⁴⁶ Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land.⁴⁷

Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section.⁴⁸ Under Neb. Rev. Stat. § 77-1359:

(2)(a) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture.

(b) Agricultural or horticultural purposes includes the following uses of land:

(i) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(ii) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production; and

(c) Whether a parcel or land is primarily used for agricultural and horticultural purposes shall be determined without regard to whether some or all of the parcel is platted and subdivided into separate lots or developed with improvements consisting of

⁴⁶ Neb. Rev. Stat. § 77-201(2) (Reissue 2018).

⁴⁷ Neb. Rev. Stat. § 77-1359(1) (Reissue 2018).

⁴⁸ Neb. Rev. Stat. § 77-132 (Reissue 2018).

streets, sidewalks, curbs, gutters, sewer lines, water lines, or utility lines.⁴⁹

Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by the Nebraska Constitution.⁵⁰ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.⁵¹ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.⁵² Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.⁵³ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.⁵⁴ If taxable values are to be equalized it is necessary for a Taxpayer to establish by clear and convincing evidence that the valuation placed on the property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.⁵⁵ There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.⁵⁶

Beginning in 2019 an owner of real property destroyed by a natural event such as a flood could file a report of the destroyed real property with the county assessor and county clerk of the county in which the

⁴⁹ Neb. Rev. Stat. § 77-1359(2) (Reissue 2018).

⁵⁰ *Neb. Const.*, Art. VIII, § 1.

⁵¹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

⁵² *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

⁵³ *Banner County v. State Bd. of Equal.*, 226 Neb. 236, 411 N.W.2d 35 (1987).

⁵⁴ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge Cty/ Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

⁵⁵ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁵⁶ *Id.* at 673, 94 N.W.2d at 50.

property is located on or before July 15 of the current assessment year.⁵⁷ The report of destroyed real property shall be made on a form prescribed by the Tax Commissioner.⁵⁸ If the county board of equalization receives a report of destroyed real property pursuant to section 77-1308, the county board of equalization shall adjust the assessed value of the destroyed real property to its assessed value on the date it suffers significant property damage.⁵⁹ Any action of the county board of equalization which changes the assessed value of destroyed real property pursuant to this section shall be for the current assessment year only.⁶⁰ Protests of the assessed value proposed for destroyed real property pursuant to this section shall be filed with the county board of equalization within thirty days after the mailing of the notice.⁶¹ The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.⁶²

V. FINDINGS OF FACT AND ANALYSIS

A. Summary of the Evidence

The County Assessor determined that agricultural land and horticultural land in Douglas County for tax years 2019 and 2020 were subject to non-agricultural influences that would affect the most probable price paid for such properties in arm's-length transactions.⁶³ The County Assessor therefore determined that all agricultural land and horticultural land in Douglas County should receive special valuation or "the value land would have for agricultural or horticultural purposes or uses without regard to the actual value the land would have for other purposes or uses."⁶⁴ Each parcel of the

⁵⁷ See, Neb. Rev. Stat §77-1308(1) (2020 Cum. Supp)

⁵⁸ Neb Rev. Stat. §77-1308(1) (2020 Cum. Supp.)

⁵⁹ Neb. Rev. Stat. §77-1309(1) (2020 Cum. Supp.)

⁶⁰ Neb. Rev. Stat. §77-1309(2) (2020 Cum. Supp.)

⁶¹ Neb. Rev. Stat. §77-1309(3) (2020 Cum. Supp.)

⁶² Neb. Rev. Stat. §77-1309(4) (2020 Cum. Supp.)

⁶³ See, E14:6, ADDITIONAL PRF CITES

⁶⁴ Neb Rev. Stat. §77-1343(5) (Reissue 2018)

Subject Property have acres of agricultural and horticultural land that qualified for special valuation.

For both tax years the County Assessor valued the agricultural land and horticultural land acres at its special valuation using characteristics of the properties and data from agricultural land sales in more rural counties in eastern Nebraska, where non-agricultural influences and not pervasive and where selling prices for agricultural or horticultural land reflect the agricultural or horticultural market and that have similar topographical and geological features to Douglas County.⁶⁵ The data is provided by the Nebraska Department of Revenue.⁶⁶

The 2019 and 2020 per acre values for agricultural land and horticultural land subject to special valuation were assigned based on the different Land Capability Groups (LCG).⁶⁷ LCG's are a groupings of soil types based on their use and productivity determined by the Property Tax Administrator for the State of Nebraska for each tax year.⁶⁸ The per acre values for agricultural land and horticultural land subject to special valuation vary based on the LCG, with the LCGs containing higher productivity soils having higher values.⁶⁹

Portions of Douglas County were flooded in early 2019, including some portions of the Subject Properties. The Taxpayer submitted three maps which show four of the five Subject Properties.⁷⁰ The Taxpayer testified that these maps were prepared by the Natural Resources Conservation Service (NRCS) to show the portions of the Subject Properties that were impacted in some way by the 2019 flooding. These maps show sand deposits, corn stalk deposits, and fence lines. The Taxpayer also offered a proposal from November 4, 2019, for "2019 Flood Damage Clean up for Tracts 4728, 4729⁷¹, & 4730" which totaled

⁶⁵ E14:6 ADDITIONAL PRF CITES

⁶⁶ E14:6 ADDITIONAL PRF CITES

⁶⁷ See, E14:15 ADDITIONAL PRF CITES

⁶⁸ See, Title 350 Neb. Admin. Code. Ch14 §004.08 (3/09)

⁶⁹ See, E14:15 ADDITIONAL PRF CITES

⁷⁰ E27:2-4, Note

⁷¹ This refers to both Tract 4729A & 4729B, which as noted earlier is considered one tract by the FSA and two parcels by the County.

\$51,252.00 (the Heimes Bid).⁷² For the County Board’s hearing on the Taxpayer’s protest of the determination of the Report of Destroyed Real Property the Taxpayer presented three Estimates for the “Flood Recovery” of the same tracts which totaled \$342,788.54 (the Japp Brothers Bid).⁷³ In answers to questions from the County Board, the Taxpayer testified that he did not utilize the Heimes Bid or the Japp Brothers Bid, instead utilizing different bids for the flood damage clean up on the Subject Properties. The Taxpayer did not present those bids or indicate the cost of the flood damage clean-up for the Subject Property.

Stan Mlotek, Real Estate Specialist for the Douglas County Assessor’s office testified regarding his review of the Subject Properties for which a Report of Destroyed Real Property were made in 2019. Mlotek testified that because the three Reports of Destroyed Real Property for the Subject Properties all stated that the damage estimate was TBD⁷⁴ he inspected each of the three parcels prior to the County Board’s consideration of the Reports of Destroyed Real Property. . Mlotek testified that when he inspected the Tract 4728, Tract 4729A, and Tract 4730, in July of 2019 he observed crops growing on portions of the Subject Properties. Mlotek determined that only one parcel, Tract 4729A had damage that would meet the 20% of assessed value standard for significant property damage.⁷⁵ Mlotek further testified that without any additional information regarding the cost of remediating the damage he reduced the value of Tract 4729A by 20%.

In tax year 2020 the County Assessor determined new per acre values and applied new assessments to the Subject Properties.⁷⁶ For Tract 4728, Tract 4729A, and Tract 4730, the County Board adjusted assessed values as recommended by the referee who heard the protests based on the market value of the Subject Property for agricultural or

⁷² E27:1

⁷³ E15:65, E18:63, and E21:33.

⁷⁴ See E15:60, E18:59, and E21:29.

⁷⁵ See, Neb. Rev. Stat §77-1307 (2020 Cum. Supp.) and Instructions to Form 425

⁷⁶ See, E16:18 ADDITIONAL PRF CITES for new per acre values for tax year 2020.

horticultural purposes and the estimates to clean up the 2019 flood damage provided to it via the Heimes Bid.⁷⁷

B. Analysis

In the valuation protests and appeal documents for each of the five parcels regarding the January 1, 2019, and January 1, 2020, assessed valuations the Taxpayer alleged that the values did not comply with prior Commission rulings finding that Douglas County assessments by LCGs disregarded productivity.⁷⁸ The PRF for each of the Subject Properties contains a Land Valuation Summary as well as a table containing the “Department of Revenue Approved Values” showing that the per acre values for agricultural land and horticultural land subject to special valuation vary based on the LCG, with the LCGs containing higher productivity soils having higher values.⁷⁹ The Taxpayer has failed to show that the per acre assessed values of agricultural or horticultural land subject to special valuation on the Subject Properties failed to consider the productivity of the soils in each LCG.

For Tract 4728, Tract 4729A and Tract 4730 the Taxpayer filed an appeal of the County Board’s determination regarding Destroyed Real Property in 2019 and alleged that the damage still was not being properly considered for the 2020 assessed values. The Taxpayer presented the Heimes Bid to the Commission as well as to the County Board for the tax year 2020 protest. The Taxpayer presented the Japp Brothers Bid after the County Board reviewed his Reports of Destroyed Real Property at the protest of that determination. The County Board alleges that the Commission cannot find that the County Boards action was unreasonable or arbitrary based on bids that did not exist at the time it made its determination. To the contrary, proceedings before the

⁷⁷ E16:64, E19:24, E22:32.

⁷⁸ See, *Morello v. Douglas Cty. Bd. of Equalization*, Case Nos. 14A 0092 et al, [https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/decisions/2017/feb/14A%20092-14A%20096%2C 15A-0239-15A%200243 Morello v. Douglas 0.pdf](https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/decisions/2017/feb/14A%20092-14A%20096%2C%2015A-0239-15A%200243%20Morello%20v.%20Douglas%200.pdf) (2017), also found in E14:18-32.

⁷⁹ See, E14:3 and E14:15, ADDITIONAL PRF CITES

Commission are de novo and the Commission may consider new evidence not provided to the County Board.⁸⁰ The Taxpayer's testimony, however, is that neither the Heimes Bid or the Japp Brothers Bid were accepted. The Taxpayer utilized different bids for the flood damage clean up on the Subject Properties. While the Taxpayer testified to the existence of those additional bids for flood damage clean up, they were not offered into evidence and there was no testimony presented regarding the costs involved. Without evidence on the record of these additional bids or the actual costs incurred to clean up the flood damage on the Subject Properties the Commission cannot determine that the Subject Properties incurred significant damage as defined by the statute as "damage to land exceeding twenty percent of a parcel's assessed land value in the current year as defined by the assessor."⁸¹ The Taxpayer has failed to demonstrate that the determinations of the County Board regarding the protest of the Report of Destroyed Real Property determinations were unreasonable or arbitrary.

Regarding tax year 2020, the Taxpayer alleged that the damage from the 2019 flood event had not been cleaned up as of the assessment date of January 1, 2020. The Taxpayer argued that the 2020 assessment did not account for the damage. However, the report from the protest hearing shows that the County Board approved the referee and referee coordinators recommended values based on the market value of the Subject Property for agricultural or horticultural purposes and the estimates to clean up the 2019 flood damage provided to it via the Heimes Bid for Tract 4728, Tract 4729A and Tract 4730.⁸² As noted earlier, the Taxpayer did not accept the Heimes Bid but rather utilized different bids for the flood damage clean up on the

⁸⁰ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County 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 County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

⁸¹ Neb. Rev. Stat §77-1307(2)(c)(ii) (2020 Cum. Supp.)

⁸² E16:64, E19:24, E22:32.

Subject Properties. While the Taxpayer testified to the existence of those additional bids for flood damage clean up, they were not offered into evidence and there was no testimony presented regarding the costs involved. Without evidence on the record of these additional bids or the actual costs incurred to clean up the flood damage on the Subject Properties or the value of the Subject Properties with the damage the Commission cannot determine that the adjustments to the Subject Properties by the County Board to account for this damage was unreasonable or arbitrary. The Taxpayer has failed to demonstrate that the determinations of the County Board regarding the protest of the Report of Destroyed Real Property determinations were unreasonable or arbitrary.

VI. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. Where the County Board adjusted the value of the Subject Property on the Report of Destroyed Real Property that value represents the final value for that tax year only.⁸³

For all of the reasons set forth above, the determinations of the County Board in Case Nos 19A 0202, 19A 0203, 19A 205, 19A 216, 19A 217, 19A 0218, 19A 0219, 20A 0236, 20A 0237, 20A 0238, 20A 0239, and 20A 0240 are affirmed. The determination of the County Board in Case No 19A 0204 is vacated and reversed, as it is superseded by the determination of the County Board in Case No. 19A 0216.

⁸³ See, Neb. Rev. Stat. §77-1309(2) (2020 Cum. Supp.)

VII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the final value of the Subject Property in Case Nos 19A 0202, 19A 0203, 19A 205, 19A 216, 19A 217, 19A 0218, 19A 0219, 20A 0236, 20A 0237, 20A 0238, 20A 0239, and 20A 0240 are affirmed.
2. The decision of the Douglas County Board of Equalization in Case No. 19A 0204 is vacated and reversed.
3. The assessed values of the Subject Property for tax year 2019 are:

19A 0205 (Tract 4728)	\$174,360
19A 0217 (Tract 4728)	\$174,360
19A 0204 (Tract 4729A)	\$369,270
19A 0216 (Tract 4729A)	\$369,270
19A 0219 (Tract 4729B)	\$102,780
19A 0203 (Tract 4730)	\$312,620
19A 0218 (Tract 4730)	\$312,620
19A 0202 (Tract 4731)	\$366,780

4. The assessed values of the Subject Property for tax year 2020 are:

20A 0237 (Tract 4728)	\$100,420
20A 0239 (Tract 4729A)	\$211,150
20A 0238 (Tract 4729B)	\$ 98,240
20A 0236 (Tract 4730)	\$301,120
20A 0240 (Tract 4731)	\$386,770

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.

7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2019 and 2020.
9. This Decision and Order is effective for purposes of appeal on January 9, 2023.⁸⁴

Signed and Sealed: January 9, 2023

Steven A. Keetle, Commissioner

SEAL



James D. Kuhn, Commissioner

⁸⁴ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.