

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

BERNARD J. MORELLO,
APPELLANT,

CASE NO: 21R 0761

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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 0823700000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$34,000 for tax year 2021.
3. Bernard J. Morello (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 \$10,800 for tax year 2021.
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 10, 2023, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Bernard J. Morello was present at the hearing for the Taxpayer.
8. Scott Barnes with the County Assessor's Office (the County 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 considering an appeal, 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."³ 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 evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
12. 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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 988 square foot one and one-half story residence constructed in 1925.
17. The Taxpayer purchased the subject Property in 2019 for \$15,000.
18. The Taxpayer stated that in June of 2020 the Subject Property was vandalized and the City of Omaha issued an order to vacate the Subject Property. The Taxpayer provided a copy of the order and a list of city code violations for the Subject Property.
19. The Taxpayer presented an estimate to remediate damage to the Subject Property including repairing and/or replacing doors, drywall, paint, and hardware of approximately \$13,640 obtained in June of 2020.
20. The Taxpayer alleged that the condition rating of fair for the Subject Property was incorrect, and that the property should be rated at worn out condition.
21. The Taxpayer further alleged that the assessed value of the Subject Property was not equalized with another comparable property located at 4722 N 30th Street.
22. The Taxpayer presented the Property Record File (PRF) for the Subject Property and a property located at 4722 N 30th street.
23. The PRF's indicate that the Subject Property had a condition rating of poor and an improvement value of \$33,200 prior to

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

- County Board Action and the property at 4722 N 30th Street had a condition rating of worn out and an improvement value of \$0.
24. The County Appraiser stated that based on inspections conducted for subsequent assessments he agreed that the condition rating of the Subject Property should be reduced to worn out from fair.
 25. The County appraiser stated that the value of the improvements on the Subject Property with a condition rating of worn out would be \$13,300 for tax year 2021, using the County Assessor's valuation model.
 26. The County Appraiser stated that the property located at 4722 N 30th street did not have a garage and had extensive water damage and interior mold that the Subject Property did not have, and that these differences would account for the difference in the assessed values between these two properties for tax year 2021.
 27. The County Board presented information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, for each of the tax years on appeal.
 28. 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.
 29. 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 800
<u>Improvements</u>	<u>\$10,000</u>
Total	\$10,800

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 (Reissue 2018).
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 2021.
7. This Decision and Order is effective on April 10, 2024.

Signed and Sealed: April 10, 2024



Steven A. Keetle, Commissioner