

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

BERNARD J. MORELLO,  
APPELLANT,

CASE NO: 22R 0871

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

DECISION AND ORDER  
REVERSING 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 \$38,600 for tax year 2022.
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 \$38,600 for tax year 2022.
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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### 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 stated that the Subject Property needs additional repairs beyond the repairs contained in the estimate provided, making it his opinion that the Subject Property is non-repairable as of 2022.
21. The Taxpayer stated that the cost to demolish the improvements on the Subject Property would be approximately \$15,000. The Taxpayer presented a surety bond filed with the City of Omaha for demolition of property in the city of Omaha.
22. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

characteristics of the Subject Property and 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.

23. The PRF indicated that the Subject Property had a condition rating of worn out for tax year 2022.
24. The PRF indicated that the market area in which the Subject Property was located was reappraised for tax year 2022.
25. The County Appraiser stated that the property at 4720 N 30<sup>th</sup> Street, directly next door to the Subject Property, was one of the qualified sales that occurred in the economic area of the Subject Property. The County Appraiser stated that 4720 N 30<sup>th</sup> Street was a one and one-half story residence and had the same condition rating as the Subject Property but was larger than the Subject Property and didn't have a garage and that it sold for \$18.00 per square foot.
26. The County Appraiser stated that based on the qualified sales, in particular the sale at 4720 N. 30<sup>th</sup> Street his opinion of value for the Subject Property for tax year 2022 was \$22 per square foot or \$21,700 with \$5,400 allocated to the land component and \$16,300 allocated to the improvements.
27. The Taxpayer presented a listing of properties that he owned in Douglas County showing their assessed values for tax year 2021 and 2022.
28. The Taxpayer alleged that the swings in value from tax year 2021 to tax year 2022 were unreasonable and arbitrary.
29. The assessed value for real property may be different from year to year according to the circumstances.<sup>9</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's

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<sup>9</sup> *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).

valuation.<sup>10</sup> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>

30. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
31. The Commission finds that the assessed value of the Subject Property for tax year 2022 is \$21,700 with \$5,400 allocated to the land component and \$16,300 allocated to the improvements.
32. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
33. The Taxpayer has 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 vacated.

#### 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 2022 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 5,400
<u>Improvements</u>	<u>\$16,300</u>
Total	\$21,700

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas

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<sup>10</sup> *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).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

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 2022.
7. This Decision and Order is effective on April 10, 2024.

Signed and Sealed: April 10, 2024



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Steven A. Keetle, Commissioner