

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

ROSE M. NELSON
APPELLANT,

CASE NO: 23A 0673

V.

MORRILL COUNTY BOARD
OF EQUALIZATION, TRENT
AND AMY MCVICKER
APPELLEE.

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

I. BACKGROUND

1. The Subject Property is a Grain Bin that is an Improvement on Leased Land (IOLL) in Morrill County, parcel number 200160772.
2. The Morrill County Assessor (the Assessor) assessed the Subject Property at \$51,065 for tax year 2023.
3. Trent McVicker protested this value to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$39,895 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$39,895 for tax year 2023.
5. The Assessor appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on June 7, 2024, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner James D. Kuhn.
7. Rose M. Nelson (the Assessor) and Robert Brenner (Attorney) were present at the hearing for the Appellant.

8. Kirk M. Fellhoelter (County Attorney) 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

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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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 Assessor asserted the actions of the Morrill County Board of Equalization (the Board) caused dis-equalization by lowering the improvement value of the Subject Property and returning the value to the 2022 tax year value. The Assessor reviewed and raised all rural improvement values by 28% for the 2024 tax year due to increasing sales prices in Morrill County.
17. The Assessor provided comparable properties for the Subject Property. All the comparable properties received the 28% increase to the improvements, and none were lowered by the Board as those parcels did not file a protest for 2023.
18. The County Attorney stated the land valuation was not an issue with the protest, only the improvement value of the Subject Property was at issue. The Board changed the improvement value of the Subject Property back to the 2022 improvement value. The County Attorney stated that none of the County Board Members had an Assessor's Certificate and none carried any professional Appraisal License.

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

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).

19. The assessed value for real property may be different from year to year according to the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
20. The Board's actions of simply reducing the improvement value of the Subject Property to the previous year's value was arbitrary, unreasonable and without merit. The Board's actions ignored recent market sales and discounted the Assessors sales file showing an increase in value to rural improvements was necessary to stay within the acceptable statutory limits of valuation.
21. The Board provided no evidence to support their ruling.
22. The Board's action of reducing the improvement value of only those rural improved parcels that filed a protest caused dis-equalization and is an arbitrary and unreasonable decision and should therefore be reversed.
23. The Appellant 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.
24. 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 2023 is vacated.

⁹ *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).

¹⁰ *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).

2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$0
<u>Improvements</u>	<u>\$51,065</u>
Total	\$51,065

3. This Decision and Order, if no further action is taken, shall be certified to the Morrill County Treasurer and the Morrill 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 2023.
7. This Decision and Order is effective on July 3, 2024.

Signed and Sealed: July 3, 2024



James D. Kuhn, Commissioner