

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

ROSE M. NELSON,
APPELLANT,

CASE NO: 23A 0674, 23A 0675
& 23A 0676

V.

MORRILL COUNTY BOARD
OF EQUALIZATION,
AND
COOTE MULLOY,
APPELLEE(S).

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

I. BACKGROUND

1. The Subject Properties are three rural improved parcels in Morrill County, parcel numbers 200048867, 200049650 and 200049472.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Properties for tax year 2023 at:

200048867	\$376,200
200049650	\$57,510
200049472	\$539,400

3. The County Board determined that the taxable values of the Subject Properties for tax year 2023 were:

200048867	\$344,100
200049650	\$49,935
200049472	\$479,705

4. The Assessor appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).

5. 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.
6. Rose M. Nelson (the Assessor) and Robert M. Brenner (the Attorney) were present at the hearing for the Appellant.
7. Kirk M. Fellhoelter (County Attorney) was present for the County Board and Taxpayer.

II. APPLICABLE LAW

8. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
9. The Commission's review of a determination of the County Board of Equalization is de novo.²
10. 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

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.

11. 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
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. 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
14. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

15. The Assessor asserted the actions of the Morrill County Board of Equalization (the Board) caused dis-equalization by lowering or removing the improvement values of the Subject Properties and returning their values 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.
16. The Assessor provided comparable properties for each of the Subject Properties. 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.
17. The County Attorney stated the land valuations were not an issue with the protests, only the improvement value of the

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).

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).

Subject Properties was at issue. The Board changed the improvement value of the Subject Properties back to the 2022 improvement value or removed the outbuilding value all together.

18. 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
19. The Board's actions of simply reducing the improvement values of the Subject Properties 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. The Board provided no evidence to support their ruling. The Board's actions of reducing or removing 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.
20. The Attorney for the Appellant (the Attorney) made a motion at the hearing that the Board didn't have jurisdiction to hear protests 23A 0674 and 23A 0676 as the form 422 was filled out incorrectly. The Taxpayer did not provide a Property Identification Number, only a section, township, and range; did not provide a Real Property Description, only stating "All improvements on this site" and only filled out the protested improvement value. Furthermore, the Board did not include a "Basis for Action Taken", only offering "Lower value on building". The Attorney also brought into question the ownership of the protested property. Two of the protests are owned by Mulloy C C LTD and were signed by a Coote Mulloy,

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).

but there was no authorization provided with the Form 422 saying Mr. Mulloy was authorized to sign the protest on behalf of Mulloy C C LTD.

21. Neb. Rev. Stat. § 77-1502(2) states, in relevant part, that “a description adequate to identify each parcel shall be provided.” The Assessor was able to discern the property being protested and the Board took action on the filed protests.
22. Regarding the alleged deficiency in providing an authorization, Neb. Rev. Stat. § 77-1502(2) expressly provides that a person signing on behalf of an owner “shall provide the authorization with the protest.” However, the statute does not require a county board to dismiss a protest if no authorization is concurrently filed.¹¹ Here, the taxpayer provided a description adequate for the Assessor and County Board to decide on these protests. Accordingly, the Appellant’s motion is overruled.
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 Appellant has adduced clear and convincing evidence that the determinations of the County Board were arbitrary or unreasonable and the decisions of the County Board should be vacated.

IV. ORDER

IT IS ORDERED THAT:

1. The decisions of the County Board of Equalization determining the taxable values of the Subject Properties for tax year 2023 are vacated and reversed.
2. The taxable values of the Subject Properties for tax year 2023 are:

¹¹ Contrast with the language in section 77-1502(2) which requires county boards to dismiss a protest if it “does not contain or have attached the statement of the reason or reasons for the protest, including the requested valuation or the applicable description of the property...”

	200048867	200049650	200049472
Land	\$275,085	\$36,335	\$266,500
Improvement	\$101,115	\$21,175	\$272,900
Total	\$376,200	\$57,510	\$539,400

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