

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

ROSE M. NELSON  
APPELLANT,

CASE NO: 23R 0691

V.

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

MORRILL COUNTY BOARD  
OF EQUALIZATION, ROBERT  
L. AND MARLENE K.  
KEPLER  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is an improved rural residential parcel in Morrill County, parcel number 200119314.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$510,705 for tax year 2023.
3. The Taxpayers (Robert L. and Marlene K. Kepler) requested a taxable value of \$290,590 for the tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$430,810 for tax year 2023.
5. Rose M. Nelson (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 September 9, 2024, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner James D. Kuhn.
7. Robert M. Brenner, Attorney, and Rose M. Nelson (the Assessor) were present at the hearing.
8. Kirk M. Fellhoelter, Morrill 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.<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 Assessor stated an inspection of the Subject Property was conducted to ensure the Property Record File (PRF) was accurate. After the inspection, the Assessor recommended removing one Homesite valued at \$12,000, to the County Board. The County Board lowered the value \$79,895. The final form 422 signed by the County Board of Equalization Chairman and the County Clerk stated, "have assessor review and after review, remove one homesite, lower land value". The County Board lowered the land value by \$10,000 (not the \$12,000 value of a Homesite) and the improvement value by \$68,895. The Morrell County Attorney did not provide any reasoning for the reduction in valuation, only that the recommendation of the Assessor to remove one Homesite was accepted.
17. The Assessor provided the PRF for the Subject Property with the recommended corrections. The Assessor provided PRFs for comparable properties. The Assessor stated she increased rural residential property in order to stay in compliance with Neb. Rev. Stat. 77-5023 requiring residential properties to be assessed within the acceptable range of 92% to 100% of actual value.
18. The Appellee argued that the Assessor's 28% increase to rural residential property was based on a limited number of sales and

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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).

did not feel that 6 sales were enough to warrant such an increase. The Appellee lowered the assessment but did not offer any evidence or support showing how they arrived at the final value of the Subject Property.

19. The Appellee did not provide any evidence to support a lower value for the Subject Property, however, “[T]he County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.”<sup>9</sup>
20. Competent evidence can be “evidence tending to show that the valuation” adopted by a county board of equalization is questionable. In this case, the Assessor provided evidence to support her valuation. The Assessor provided comparable properties with a price per square foot comparison. The proposed value by the Appellee lowered the Subject Property’s price per square foot well below comparable properties. The Assessor provided the residential correlation for Morrell County, showing that due to increasing sales prices as compared to assessments, an increase to all valuation groups in Morrell County was necessary to achieve equalization.
21. 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.
22. The Appellant 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:**

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<sup>9</sup> *Wheatland Indus. v. Perkins Cty. Bd. of Equal.*, 304 Neb. 638, 647, 935 N.W.2d 764, 771 (2019).

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2023 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

**Total                      \$498,705**

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 May 16, 2025.

Signed and Sealed: May 16, 2025



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James D. Kuhn, Commissioner