

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

ROSE M. NELSON  
APPELLANT,

CASE NO: 23R 0699

V.

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

MORRILL COUNTY BOARD  
OF EQUALIZATION,  
CARMEN BENAVIDES  
APPELLEE.

**I. BACKGROUND**

1. The Subject Property is an improved rural residential parcel in Morrill County, parcel number 100016671.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$53,925 for tax year 2023.
3. Carmen Benavides (the Taxpayer) protested this value to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$40,700 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$3,200 for tax year 2023.
5. Rose M. Nelson 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 10, 2024, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner James D. Kuhn.
7. The Taxpayer was present at the hearing.
8. Robert M. Brenner, Attorney, and Rose M. Nelson (the Assessor) were present at the hearing.

9. Kirk M. Fellhoelter, Morrill County Attorney, was present for the County Board.

## II. APPLICABLE LAW

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
11. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
12. 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>
13. 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>

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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).

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
15. 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>
16. 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**

17. 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 made corrections to the PRF for damage the Subject Property received in a blizzard in December 2023 and recommended an assessment of \$26,970 to the County Board. The County Board took action to adjust the value lower than the Assessor's recommended value. The Assessor was unsure what information the County Board relied on to quantify the action.
18. The Assessor provided the PRF for the Subject Property with the added depreciation adjustment to account for the damage to the Subject Property. The Assessor provided PRFs for comparable sales, two of which are newer sales and not in the sales file but were used to show trending sales. The Assessor stated she increased rural residential property by 28% 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.
19. The Appellee argued that the Assessor's 28% increase to rural residential property was based on a limited number of sales and did not feel that 6 sales were enough to warrant such an

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<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).

<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).

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.

20. 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.”
21. The Taxpayer stated the Subject Property was not livable after the storm damage. Pipes were frozen and broke which resulted in extensive water damage and mold to the interior of the Subject Property and leaks in the roof resulted from heavy snowfall. No other evidence was provided by the Taxpayer.
22. 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 sales of abandoned homes with similar quality and condition ratings. The Assessor provided a section of the Morrill County Reports and Opinions 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.
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 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 and reversed.
2. The taxable value of the Subject Property for tax year 2023 is:

**Total                      \$26,970**

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 16, 2025.

Signed and Sealed: July 16, 2025



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James D. Kuhn, Commissioner