

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

ROSE M. NELSON
APPELLANT,

CASE NO: 23R 0704

V.

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

MORRILL COUNTY BOARD
OF EQUALIZATION,
BRIDGEPORT
INDEPENDENT LIVING LLC
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Morrill County, parcel number 100144149.
2. The Morrill County Assessor (the County Assessor) assessed the Subject Property at \$1,252,675 for tax year 2023.
3. Rose M. Nelson (the Taxpayer) protested this value to the Morrill County Board of Equalization (the County Board) and requested an assessed value of \$465,975 for tax year 2023.
4. The County Board determined that the taxable value of the Subject Property was \$892,000 for tax year 2023.
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 September 11, 2024, at Fairfield Inn and Suites by Marriott, 902 Winter Creek Drive, Scottsbluff, NE 69361, before Commissioner James D. Kuhn.
7. Darrell Kraupie (part owner) was present at the hearing for the Taxpayer.

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 1.¹
11. The Commission's review of a determination of the County Board of Equalization is de novo.²
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."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
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.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).

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Assessor stated the Subject Property is a Multiple Residence (senior citizen) containing sixteen units. The Assessor stated Darrel Stanard, a licensed appraiser, provided an income approach which showed a lower value than the current assessment. Stanard is under a maintenance contract with the county assessor for assistance valuing commercial properties.
18. Stanard performed a market-based income approach for Subject Property and ultimately arrived at a value of \$948,315 which was the new recommendation to the county board by the Assessor. Stanard used market driven expenses of 35%, cap rate of 10%, vacancy and collections rate of 5% and market rent of \$800 in his income approach.
19. Darrell Kraupie, a real estate broker and part owner of the Subject Property, stated he performed an income approach using the actual income and expenses. Mr. Kraupie stated investors would desire a 14% to 17% return on investment and therefore used a 12% capitalization rate in his income approach. Mr. Kraupie stated there is little to no vacancy for the Subject

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).

Property yet felt a 7% to 10% vacancy rate should have been used instead of the 5% market-based vacancy rate used by Mr. Stanard. Mr. Kraupie did not provide his analysis or any other information for the Commission to analyze. Mr. Kraupie acknowledged he was not a licensed appraiser.

20. 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.
21. 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:

<u>Total</u>	<u>\$948,315</u>
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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 September 10, 2025.

Signed and Sealed: September 10, 2025



James D. Kuhn, Commissioner