

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

John E. Meigs Family Trust, Linda S. Meigs, Trustee,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 17R 0604 & 17R 0605

Decision and Order Reversing the  
Determinations of the Douglas  
County Board of Equalization

**Background**

1. The Subject Property in Case No. 17R 0604 is a residential parcel improved with a 1,897 square foot one story duplex style residence, with a legal description of: Dillons 9<sup>th</sup> Add Lot 12 Block 0 58 X 140, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$152,600 for tax year 2017.
3. John E. Meigs Family Trust, Linda S. Meigs, Trustee, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$134,300 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$150,000 for tax year 2017.
5. The Subject Property in Case No. 17R 0605 is a residential parcel improved with a 1,897 square foot one story duplex style residence, with a legal description of: Dillons 9<sup>th</sup> Add Lot 13 Block 0 58 X 140, Omaha, Douglas County, Nebraska.
6. The County Assessor assessed the Subject Property at \$152,600 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$134,300 for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property was \$150,000 for tax year 2017.
9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on February 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
11. Linda S. Meigs was present at the hearing for the Taxpayer.
12. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

## Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
14. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
15. 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>
16. 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>
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
18. 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>
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

20. The Subject Properties are the two halves of a duplex property located on Western Avenue which share a common driveway.
21. The Taxpayer alleged that the assessed value of the Subject Properties should be equalized with the value of the other properties on the block by applying the average value of all of these properties to the Subject Properties.

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<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 (2009).

<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<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, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

22. The Taxpayer did not present the Property Record Files (PRF) for any of the properties used in the Taxpayer's calculation of average value.
23. The County Board presented the PRF for the Subject Properties as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Properties, which were used in determining the value attributed to each of the characteristics of residential properties in that area, including the Subject Properties.
24. The Taxpayer's requested value was determined by averaging the assessed values of other properties, and then applying the averaged per square foot value to the area of the Subject Properties. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the Subject Properties as defined by statute.<sup>9</sup> Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach.
25. Additionally, "[s]imply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments,"<sup>10</sup>
26. The Taxpayer alleged that the improvements on the Subject Properties were overvalued due to the condition of the Subject Properties. The Taxpayer offered information regarding the windows, cabinets, and shared driveway of the Subject Properties.
27. The information provided by the Taxpayer did not demonstrate that the condition rating of average for the Subject Properties as determined by the County Assessor was unreasonable, arbitrary or otherwise incorrect.
28. The Market Calculation Detail in the PRF for each of the Subject Properties contains a valuation for two and a half baths for each property. The Taxpayer stated that the Subject Properties each only have two bathrooms. Removing a half bathroom from the calculation contained in the PRF, however, results in a value for the improvements on the Subject Properties that is higher than the value for the improvements determined by the County Board.
29. The Taxpayer alleged that the assessed value of the land component of the Subject Properties were not equalized with the land component of other comparable properties.
30. The Taxpayer presented information that showed that there were 22 lots on the same block as the Subject Properties. Each of the lots on the same block as the Subject Properties was 0.18 acres in approximately the same rectangular shape and was improved with a duplex style residence. The assessed value of the land component of the Subject Properties for tax year 2017 was \$40,600 while the assessed value for the land component of the other twenty parcels on the block was \$33,600.

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<sup>9</sup> See, Neb. Rev. Stat. § 77-112 (Reissue 2018).

<sup>10</sup> The Appraisal of Real Estate, Appraisal Institute, at 308 (13th ed. 2008).

31. The Commission finds and determines that the equalized value of the land component of each of the Subject Properties is \$33,600 for tax year 2017.
32. The Taxpayer 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.
33. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Properties for tax year 2017 are vacated and reversed.
2. The taxable value of the Subject Property In Case No. 17R 0604 for tax year 2017 is:

Land	\$ 33,600
<u>Improvements</u>	<u>\$109,400</u>
Total	\$143,000

3. The taxable value of the Subject Property In Case No. 17R 0605 for tax year 2017 is:

Land	\$ 33,600
<u>Improvements</u>	<u>\$109,400</u>
Total	\$143,000

4. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2017.
8. This Decision and Order is effective on February 28, 2020.

Signed and Sealed: February 28, 2020

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Steven A. Keetle, Commissioner