

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

Colleen G. Moore ETAL Trust, Myron R. Moore,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 18R 0077

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,961 square foot two story residence, with a legal description of: Harvey Oaks III Replat Lot 385, Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$193,200 for tax year 2018.
3. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$193,200 for tax year 2018.
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 December 3, 2019, at Omaha State Office Building, 1313 Farnam, Room 227, Omaha, NE, before Commissioner 4.
7. Myron R. Moore was present at the hearing for the Colleen G. Moore ETAL Trust (Taxpayer).
8. Stan Mlotek, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

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>

<sup>1</sup> 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).

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>
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>

#### Findings of Fact & Conclusions of Law

1. The Taxpayer alleges that the increase in the assessed value from the prior year’s assessment is unreasonable and arbitrary and the increase in assessed value was greater than other properties in the neighborhood.
2. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>10</sup> Additionally, the differences in the changes of the Subject Property and other properties in the neighborhood is only relevant to the current year’s assessment if the differences resulted in values that were not equalized for the current assessment year.
3. The Taxpayer alleged that the assessed value of the Subject Property should be reduced because it’s characteristics as listed in the County Assessor’s records were incorrect.

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<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.*

<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. County 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).

<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

4. The County Board presented the Property Record File (PRF) for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property.
5. The sketch of the Subject Property in the PRF shows that the Subject Property has two floors with the first floor divided between two levels: a level even with the elevation of the front door; and a level a few steps up from that with the basement underneath, resulting in its designation as a tri-level.
6. The Taxpayer and the County Appraiser agreed that the Subject Property should be designated as a two story residence, however neither the Taxpayer nor the County Appraiser presented information to indicate what that change in designation would have on the assessed value of the Subject Property.
7. The list of qualified sales in the same neighborhood as the Subject Property indicate that in that neighborhood the per square foot values<sup>11</sup> of two story properties and tri-level properties were both in the same range of values.
8. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
9. The Taxpayer presented the PRF for three other properties that are located on the same circle as the Subject Property that he alleged were comparable properties.
10. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>12</sup>
11. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”<sup>13</sup>
12. The PRFs presented demonstrate that differences in the assessed values of the Subject Property and the properties presented as comparables are due to differences in their characteristics.
13. One of the three properties presented as a comparable has a lower condition rating than the other two and the Subject Property and as a result has lower per square foot values applied than the Subject Property and would not be a comparable property to the Subject Property.
14. Of the remaining three properties that have the same condition rating and the Subject Property actually has the lowest per square foot base value applied but because it has the most square footage it has the highest total base value. The Subject Property is also the newest of the three average condition properties resulting in the lowest physical depreciation being applied when calculating its value.

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<sup>11</sup> Both sales prices and assessed values.

<sup>12</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>13</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

15. A further review of other differences in characteristics of the properties such as basement size and finish, garage size and type (attached versus basement), sprinkler systems, etc. demonstrates that the methodology used by the County to value the Subject Property is uniformly applied but that differences in the overall assessed values are attributable to differences in the characteristics and amenities of the properties.
16. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
17. The Taxpayer has not 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 affirmed.

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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 33,400
<u>Improvements</u>	<u>\$159,800</u>
Total	\$193,200

3. 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).
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 2018.
7. This Decision and Order is effective on February 10, 2021.

Signed and Sealed: February 10, 2021.

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Steven A. Keetle, Commissioner