

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

Janet M. Morrow Revocable Trust,  
Appellant,

v.

Lancaster County Board of Equalization,  
Appellee.

Case No: 19R 0142

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: Rathbones Replat – PT B11 Sheridan Park, Lot B.
2. The Lancaster County Assessor (the Assessor) assessed the Subject Property at \$340,200 for tax year 2019.
3. Janet M. Morrow Rev. Trust (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board) and requested an assessed value of \$299,856 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$340,200 for tax year 2019.
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 August 25, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. W. Michael Morrow was present at the hearing for the Taxpayer.
8. Brian Coulter (the 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>
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

<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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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

16. The Taxpayer stated the Subject Property is being valued at a higher price per square foot (PPSF) than three comparable properties that are near the Subject Property. The Taxpayer stated the average PPSF of the three comparable properties is \$124.94 whereas the Subject Property has a PPSF of \$141.75.
17. The Taxpayer provided property record files (PRF) for the three comparable properties and a GIS map showing the location of the three comparable properties. All three comparable properties are in close proximity to the Subject Property.
18. The Appraiser stated sales in the neighborhood support the current assessment of the Subject Property.
19. The Commission has analyzed the PRF provided by the Taxpayer of the Subject Property and the three comparable properties. When analyzing the comparable properties, the Commission found differences in the components of the Subject Property that would lead to a value difference between the properties. The Subject Property was the only one with partition finish in the basement (550 square foot) and a wood deck (91 square foot). Other differences would be the six to eight more plumbing fixtures and the one extra fireplace the Subject Property had over the comparable properties. All the properties had minimal finish in the basements and detached garages. Two of the comparable properties were two story homes whereas the Subject Property is a two and a half story home. The

---

<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).

Commission is not convinced the comparable properties provided prove the assessment of the Subject Property is incorrect.

20. 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.
21. 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Total \$340,200

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster 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 2019.
7. This Decision and Order is effective on February 9, 2021.

Signed and Sealed: February 9, 2021

---

James D. Kuhn, Commissioner