

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

CHARLES MOSES,  
APPELLANT,

CASE NOS: 21R 0766, 22R  
0780

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

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

**I. BACKGROUND**

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 2013010587.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$556,800 for tax year 2021 and \$532,100 for tax year 2022.
3. Charles Moses (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$532,100 for tax year 2021 and tax year 2022.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on April 6, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Charles Moses and Melissa Hill were present at the hearing for the Taxpayer.
8. Kurt Skradis with the County Assessor's Office (the County Appraiser) was present for the County Board.

## II. 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 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>

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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).

<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).

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>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 3,890 square foot one and one-half story residence constructed in 1984. The Subject Property has a quality rating of good and a condition rating of average.
17. The Taxpayer alleged that the increase in assessed value, both as a total number and as a percentage increase, from the prior assessments, particularly as compared to other nearby properties, was unreasonable or arbitrary.
18. The County Board presented the 2021 and 2022 Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, for each of the tax years on appeal.
19. The County Appraisers stated that the last time the Subject Property's market area was reappraised was in 2013 and it was determined by the County Assessor's office that properties in the Subject Property's market area were undervalued, and the entire market area reassessed for tax year 2021.

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<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).

20. The assessed value for real property may be different from year to year according to 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> Similarly, prior assessments of other properties are not relevant to the subsequent assessment.<sup>11</sup>
21. The Commission must look to the value of the Subject Property as of January 1 of each tax year.<sup>12</sup>
22. The Taxpayer alleged that the assessed value of the Subject Property should be lowered based on the purchase price.
23. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value."<sup>13</sup>
24. "Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.
25. The Taxpayer stated that the Subject Property had been on the market for four years prior to the 2019 purchase.
26. The Taxpayer provided two listing histories for eight to twelve months prior to the 2019 purchase. Each listing contains different information regarding listing actions.
27. The PRF for the Subject Property indicates that the property was purchased with a trust deed.

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<sup>9</sup> *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 614, 428 N.W.2d 201, 206 (1988); see Neb. Rev. Stat. § 77-1502 (Reissue 2018).

<sup>10</sup> *Affiliated Foods Coop.*, 229 Neb. at 613, 428 N.W.2d at 206; *DeVore v. Board of Equal.*, 144 Neb. 351, 354-55, 13 N.W.2d 451, 452-53 (1944).

<sup>11</sup> *Kohl's Dep't Stores v. Douglas Cty. Bd. of Equal.*, 10 Neb. App. 809, 814-15, 638 N.W.2d 877, 881 (2002).

<sup>12</sup> Neb. Rev. Stat §77-1301(Reissue 2018)

<sup>13</sup> *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

28. The County Appraiser stated that the sale of the Subject Property was determined to not be a valid sale and was not used when determining assessed values. A list of valid sales used for each of the tax years was presented with each PRF.
29. The Taxpayer presented parts of an appraisal report for the Subject Property prepared at the time of the 2019 purchase. The portions of the appraisal report offered suggest an opinion of market exposure time between 15 and 90 days and an opinion of value as of November of 2019 of \$430,000.
30. The information presented to the commission does not support a determination that the 2019 purchase price of the Subject Property would be a reliable indicator of the 2021 and 2022 value.
31. The Taxpayer alleged that the assessed value of the Subject Property is not equalized with other comparable properties.
32. The Taxpayer presented a chart showing average assessment for several properties as well as the 2021 PRF for these properties.
33. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>14</sup>
34. “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>15</sup>
35. A review of the PRF of the Subject Property and the PRFs for the other properties presented show that the differences in the assessed value of the Subject Property and the other properties is due to the differences in characteristics and amenities such as location, style and type of construction, age, quality, condition, garage size, decks, patios, fireplaces, etc. For example, the Subject Property is only property of frame brick veneer

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<sup>14</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>15</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

- construction found on the “Comparable Property Assessments 2021” chart which accounts, in part, for its higher per square foot valuation. As another example, when looking at just the PRFs for all of the other frame brick veneer properties presented the Subject Property has the lowest per square foot valuation.
36. The County Appraiser stated that many of the properties presented by the Taxpayer are located outside the market area of the Subject Property and their valuations would be impacted by different sales than those presented for the Subject Property’s market area.
  37. The Taxpayer has not demonstrated that assessed value of the Subject Property is not equalized with other comparable properties.
  38. The Taxpayer alleged that the assessed value of the Subject Property should be reduced based on its characteristics.
  39. The Taxpayer discussed the location of the Subject Property alleging that crime and traffic in the area and on the nearby interstate as well as its location backing up to N 102<sup>nd</sup> street rather than another residential property negatively impacted its value.
  40. The County Appraiser stated that impact on valuation that crime and traffic in the area and on the nearby interstate would be reflected in all of the sales in the Subject Property’s market area and that based on sales the County Assessor’s office did not find a negative impact on values for properties along N 102<sup>nd</sup> street.
  41. The Taxpayer did not present any other information to quantify any impact of crime, traffic, the nearby interstate, and the adjacent N 102<sup>nd</sup> street on the value of the Subject Property.
  42. The Taxpayer discussed repairs and maintenance that the Subject Property required and presented photographs of some of the items discussed.
  43. The Taxpayer did not present estimates or bills for repairs and maintenance issues discussed.

44. The Commission finds that most of the repairs and maintenance discussed are consistent with a condition rating of average as shown on the PRF for the Subject Property.
45. The Taxpayer did show that the amount of basement finish should be 840 square feet rather than 1000 to account for the removal of the sauna space and that the remaining basement finish would be fair rather than full basement finish as shown on the PRF for the Subject Property.
46. The Commission finds that the assessed value of the improvements on the Subject Property be reduced by \$19,300<sup>16</sup> to account for the change to 840 square feet of fair basement finish.
47. The Commission finds that the assessed value of the Subject Property for tax years 2021 and 2022 is \$512,800 with \$62,800 allocated to the land component and \$450,000 allocated to the improvements.
48. 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.
49. 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/affirmed.

#### **IV. ORDER**

##### **IT IS ORDERED THAT:**

1. The decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2021 and 2022 are vacated and reversed.

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<sup>16</sup> \$33,800 (current basement finish value) - \$14,500 (recalculated basement finish value) = \$19,300. 840 sq feet x \$29.53 psf (fair finish) = \$24,805 - \$6,315 (25.46% depreciation) = \$18,490 x 0.7858 Nbhd Adj = \$14,500 Recalculated basement finish value (rounded). 1,000 sq ft x \$57.70 psf (finished) = \$57,700 - \$14,690 (25.46% depreciation) = \$43,010 x 0.7858 Nbhd Adj = \$33,800 current basement finish value (rounded).

2. The taxable value of the Subject Property for tax years 2021 and 2022 is:

Land	\$ 62,800
<u>Improvements</u>	<u>\$450,000</u>
Total	\$512,800

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 years 2021 and 2022.
7. This Decision and Order is effective on May 24, 2024.

Signed and Sealed: May 24, 2024



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Steven A. Keetle, Commissioner