

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

Kinze M. Williams,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 16R 0339 & 17R 0618

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

**For the Appellant:**  
Kinze M. Williams,  
Pro Se

**For the Appellee:**  
Jennifer D. Chrystal-Clark  
Deputy Douglas County Attorney

These appeals were heard before Commissioners Robert W. Hotz and James D. Kuhn.

**I. THE SUBJECT PROPERTY**

The Subject Property is a residential parcel located in Omaha, Douglas County, Nebraska. The parcel is improved with a 1,503 square foot residence, built in 1910. The legal description of the parcel is found at Exhibits 3 and 4. The property record card for the Subject Property is found at Exhibits 3 and 4.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property was \$50,100 for tax year 2016.<sup>1</sup> Kinze M. Williams (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$10,000.<sup>2</sup> The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$50,100.<sup>3</sup>

For tax year 2017, the County Assessor determined that the assessed value of the Subject Property was \$38,000.<sup>4</sup> The Taxpayer protested this assessment to the County Board. The

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 3:11.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 2.

County Board determined that the taxable value of the Subject Property for tax year 2017 was \$38,000.<sup>5</sup>

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of Exhibits. The Commission held a hearing on October 5, 2018.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>6</sup> When the Commission considers an appeal of a decision of a County Board of Equalization, 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>7</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>8</sup>

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>9</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>10</sup>

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>11</sup> The County Board need

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<sup>5</sup> Exhibit 2.

<sup>6</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>7</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>8</sup> *Id.*

<sup>9</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>10</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>11</sup> Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.<sup>12</sup>

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”<sup>13</sup> The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”<sup>14</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>15</sup>

#### IV. VALUATION

##### A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.<sup>16</sup>

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”<sup>17</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>18</sup> Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.<sup>19</sup> All real property in Nebraska subject to taxation shall be assessed as of

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<sup>12</sup> *Bottomf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

<sup>13</sup> Neb. Rev. Stat. §77-5016(8) (Reissue 2018).

<sup>14</sup> Neb. Rev. Stat. §77-5016(6) (Reissue 2018).

<sup>15</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>16</sup> Neb. Rev. Stat. §77-112 (Reissue 2018).

<sup>17</sup> *Id.*

<sup>18</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>19</sup> Neb. Rev. Stat. §77-131 (Reissue 2018).

January 1.<sup>20</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>21</sup>

## **B. Summary of the Evidence**

Mr. Kinze Williams testified that he purchased the property, a Housing and Urban Development (HUD) residence, in 2011. He stated that he paid \$13,700.<sup>22</sup> Mr. Williams did not know whether the property had been subject to foreclosure at the time he purchased it. He testified that his motivation for buying the home was to provide affordable rent for one of his former employees.<sup>23</sup> He stated that he otherwise would have been willing to pay no more than \$10,000 for the property. Mr. Williams testified that after the purchase he had to do extensive work on the property in order to make it habitable. Mr. Williams gave his opinion that the property was in fair condition as of the times of the applicable assessment effective dates. He testified further that he charged rent in the amount of \$390 per month during the time period relevant to these proceedings.

In his testimony, Mr. Williams stressed that the assessment history of the Subject Property was unreasonable. For instance, the assessed value in tax year 2013 was reduced by the County Board to \$16,000,<sup>24</sup> but was increased by the County Assessor for tax year 2016 to \$54,500.<sup>25</sup> For tax year 2017, the taxable value was reduced to \$38,000 and for tax year 2018, the taxable value was reduced again to \$31,000.<sup>26</sup> What is at issue in these appeals, however, is just the taxable value of the Subject Property for tax years 2016 and 2017.

The County Assessor utilized a cost approach, rather than a sales comparison approach, to value the Subject Property for tax year 2016. The County Assessor rated the Subject Property at average condition,<sup>27</sup> contrary to Mr. Williams' opinion that the property was in fair condition. The value of the improvements portion of the property was determined by calculating a

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<sup>20</sup> See Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>21</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2018).

<sup>22</sup> Exhibit 3:15.

<sup>23</sup> Mr. Williams testified that his tenant pays \$390 per month to rent the home.

<sup>24</sup> Nothing in the record explains why the County Board reduced the taxable value to \$16,000, beginning tax year 2013.

<sup>25</sup> See, Exhibit 3:9.

<sup>26</sup> Exhibit 4:16.

<sup>27</sup> Exhibit 3:4.

replacement cost new less depreciation (RCNLD).<sup>28</sup> Depreciation was determined to be 54%.<sup>29</sup> As a result of these calculations, the RCNLD of the improvements was determined to be \$53,835.<sup>30</sup> The land value was determined to be \$700.<sup>31</sup> The Commission subsequently issued an order reducing the residential land valuations of all parcels in the same market area as the Subject Property for tax year 2016 by 8%.<sup>32</sup> As a result of this order, the taxable value of the Subject Property for tax year 2016 was \$50,100.<sup>33</sup>

Of most concern to the Commission with respect to the valuation of the Subject Property are its condition rating and the depreciation determination; both have a significant bearing on the assessed value. These determinations involve some level of subjectivity, and are typically best made after the property has been inspected. In the case of residential properties, an internal inspection is the most effective way to make these subjective determinations or ratings. The record indicates that a request for an interior inspection was made by the Taxpayer when filing the 2016 appeal with the Commission, in September 2016.<sup>34</sup> However, as of the time of the hearing on October 5, 2018, no interior inspection had been completed. A notice of the tax year 2016 appeal was sent to the Douglas County Attorney.<sup>35</sup> That notice included a copy of the appeal form on which the Taxpayer indicated the request for an inspection.<sup>36</sup> At the hearing, however, it was evident that the Taxpayer and the County Assessor's office had no communication regarding the requested inspection. Whether an internal inspection of the Subject Property would have resulted in a lower or higher determination of value is therefore unknown to the Commission.

Based upon the evidence received and discussed above, the Commission cannot conclude that there is clear and convincing evidence that the valuation determinations by the County Board for tax years 2016 and 2017 were arbitrary or unreasonable.

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<sup>28</sup> Exhibit 3:7.

<sup>29</sup> Neither the Taxpayer nor the County Board called any witness from the office of the County Assessor who could explain this calculation.

<sup>30</sup> Exhibit 3:7.

<sup>31</sup> Exhibit 3:3.

<sup>32</sup> See *In the Matter of Equalization of Value of Real Property within Douglas County, Nebraska, for Tax Year 2016*, County Number 28, Findings and Order Adjusting Value (May 5, 2016).

<sup>33</sup> Exhibit 3:9.

<sup>34</sup> The appeal was received by the Commission on September 9, 2016.

<sup>35</sup> The notice of appeal was sent to the attorney of record dated September 26, 2016.

<sup>36</sup> See, Case File.

## EQUALIZATION

### A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”<sup>37</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>38</sup> The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.<sup>39</sup> In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the Subject Property and comparable property is required.<sup>40</sup> Uniformity requires that, whatever methods are used to determine actual or taxable value for various classifications of real property, the results be correlated to show uniformity.<sup>41</sup> Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.<sup>42</sup> The constitutional requirement of uniformity in taxation extends to both rate and valuation.<sup>43</sup> If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”<sup>44</sup> There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.<sup>45</sup>

### B. Summary of the Evidence

The Taxpayer offered evidence with respect to six alleged comparable properties within a four block radius of the Subject Property. Mr. Williams testified that these properties should be

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<sup>37</sup> *Neb. Const.*, Art. VIII, §1.

<sup>38</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

<sup>39</sup> *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

<sup>40</sup> *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

<sup>41</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>42</sup> *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

<sup>43</sup> *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

<sup>44</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>45</sup> *Id.* at 673, 94 N.W.2d at 50.

used for purposes of equalizing the value of the Subject Property with other comparable properties in the same jurisdiction. Based upon the information provided by the Taxpayer and received in evidence, a summary of these six properties is charted below.<sup>46</sup> It is noted, however, that property record files were not provided for any of these properties.

Property	Square Feet (SF)	Condition	Year Built	Assessed Value 2016	Assessed Value 2017	Sale Price
Subject Property: 2889 Corby Street <sup>47</sup>	1,503 SF	Average	1910	\$50,100	\$38,000	
2894 Ohio Street <sup>48</sup>	911 SF	Average	1905	\$28,100	\$27,200	
2815 Miami Street <sup>49</sup>	1,166 SF	Average	1924	\$28,400	\$25,500	
2819 N. 28 <sup>th</sup> Avenue <sup>50</sup>	1,164 SF	Fair	Unknown	\$26,000	\$20,800	\$36,900 <sup>51</sup>
2880 Maple Street <sup>52</sup>	1,240 SF	Fair	1910	\$19,500	\$23,100	
2876 Maple Street <sup>53</sup>	1,144 SF	Fair	1910	\$18,100	\$21,300	
2885 Binney Street <sup>54</sup>	1,348 SF	Worn Out	1927	\$26,800	\$19,300	\$15,000 <sup>55</sup>

Even if we were to accept the accuracy of the data as presented on the print outs provided by the Taxpayer, the Commission cannot conclude that the Subject Property is entitled to equalization relief. While two of the properties are rated at the same condition as the Subject Property, both are too much smaller in square footage to consider them comparable to the Subject Property. Since neither of the two properties sold during the relevant time period, a comparison of the assessments of the properties is not meaningful. The other four properties

<sup>46</sup> See, Exhibit 5:10-15.

<sup>47</sup> Exhibit 3, Exhibit 4.

<sup>48</sup> Exhibit 5:10.

<sup>49</sup> Exhibit 5:11.

<sup>50</sup> Exhibit 5:12.

<sup>51</sup> The most recent sale of this property occurred in 2004, more than a decade before tax years 2016 and 2017.

<sup>52</sup> Exhibit 5:13.

<sup>53</sup> Exhibit 5:14.

<sup>54</sup> Exhibit 5:15.

<sup>55</sup> The most recent sale of this property occurred in 2001, more than a decade before tax year 2016 and 2017.

were rated with inferior condition as compared to the Subject Property. Such a comparison of sold or unsold properties is also not meaningful for purposes of equalization. We therefore cannot conclude that the Subject Property is not equalized in its assessment for either tax year as compared to these six properties.

## **V. CONCLUSION**

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above the decisions of the County Board should be affirmed.

## **VI. ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining the taxable value of the Subject Property for tax year 2016 is affirmed. The taxable value of the Subject Property for tax year 2016 is \$50,100.
2. The decision of the County Board determining the taxable value of the Subject Property for tax year 2017 is affirmed. The taxable value of the Subject Property for tax year 2017 is \$38,000.
3. This Decision and Order, if no appeal is timely filed, 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 2016 and 2017.



7. This Decision and Order is effective for purposes of appeal on May 3, 2019.<sup>56</sup>

Signed and Sealed: May 3, 2019

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Robert W. Hotz, Commissioner

SEAL

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James D. Kuhn, Commissioner

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<sup>56</sup> Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.