

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

John J. Guthmann et al. Trust,  
John J. Guthmann, Trustee,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 16R 0379

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

**Background**

1. The Subject Property is a two story residential property, with a legal description of: Regency 1<sup>st</sup> Add Lot 141 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$395,800 for tax year 2016.
3. John J. Guthmann, Trustee of the John J. Guthmann et al. Trust (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$305,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$369,900 for tax year 2016.
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 16, 2018, at the Omaha State Office Building, 1313 Farnam St, Rm 227, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. The Taxpayer was present at the hearing.
8. 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**

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 the determination of the County Board of Equalization is de novo.<sup>2</sup>

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

<sup>2</sup> 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

16. The Taxpayer alleged that the Subject Property was overvalued and requested an assessed value of \$305,000.
17. The Taxpayer presented an Appraisal Report prepared for the Subject Property which was certified as being performed according to professional appraisal standards.
18. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.<sup>9</sup>
19. The commission finds and determines that the appraisal constitutes competent evidence concerning the value of the Subject Property and that the presumption in favor of the County Board’s determination is rebutted.<sup>10</sup>

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<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).

<sup>9</sup> *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>10</sup> *Id.*

20. The Appraisal Report indicates that the Taxpayer's appraiser inspected the interior and exterior of the Subject Property and determined that the quality rating was good and the condition rating was average.
21. The Appraisal Report determined that the market value of the Subject Property as of the assessment date was \$305,000, using the sales comparison approach based on an analysis of three similar properties, adjusting for differences such as basement finish and condition.
22. The Taxpayer offered additional information and statements regarding the condition of the Subject Property as of the assessment date to support the Appraisal Report's determination of average condition.
23. The County Board presented the Property Record File for the Subject Property, which indicated a quality rating of good and a condition rating of good for the Subject Property.
24. The Commission finds that the Subject Property should have a quality rating of good and a condition rating of average for tax year 2016.
25. Based on all of the information presented to it at the single Commissioner hearing the Commission finds and determines that the assessed value of the Subject Property for tax year 2016 is \$305,000.
26. 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.
27. The Taxpayer has 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 vacated.

## 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 2016, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is: \$305,000.
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 2016.
7. This Decision and Order is effective on February 1, 2019.

Signed and Sealed: February 1, 2019

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Steven A. Keetle, Commissioner