

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

Kay L. Zimmer & Gregory J. Zimmer,  
Appellant,

Case Nos: 16R 0457 & 17R 0456

v.

Douglas County Board of Equalization,  
Appellee.

Decision and Order  
Reversing County Board of Equalization for  
Tax Year 2016, and  
Affirming County Board of Equalization for  
Tax Year 2017

**Background**

1. The Subject Property is a 2,205 square foot two story residential property, with a legal description of: South Shore Heights, Lot 144 Block 0 Irreg., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$222,600 for tax year 2016.
3. Gregory J. Zimmer (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$205,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$222,600 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$241,600 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$220,000 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$241,600 for tax year 2017.
8. The Taxpayer appealed these determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on January 23, 2019, at the Omaha State Office Building, 1313 Farnam Room E (301E) Omaha, Nebraska, before Commissioner Steven Keetle.
10. Kay Zimmer was present at the hearing for the Taxpayer.
11. 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**

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>

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

13. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
14. 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>
15. 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>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
17. 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>
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

19. The Taxpayer alleged that the assessed value of the Subject property was too high because the condition rating of the improvements should be lower.
20. The Property Record File (PRF) for the Subject Property indicates that the improvements have a quality rating of good and a condition rating of average for tax years 2016 and 2017.
21. The Taxpayer provided pictures and discussed the condition of the interior of the Subject Property.

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<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* 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).

22. Based on the information presented regarding the condition of the Subject Property the Commission finds and determines that the condition rating is correctly set at average for tax years 2016 and 2017.
23. The 2016 PRF indicates that the Subject Property has two fireplaces when it has only one fireplace. Additionally, the second fireplace was removed for the 2017 assessment. The contribution to value of a fireplace should be removed from the assessed value of the Subject Property for tax year 2016.
24. The Taxpayer alleged that the assessed value of the Subject Property was not uniform and proportionate with other comparable properties.
25. Comparable properties share similar use (residential, commercial, industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
26. “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>10</sup>
27. The Taxpayer did not present the Property Record Files (PRF) for the parcels that she alleged were comparable to the Subject Property. Without the details contained in the PRF (the quality and condition rating, fireplace(s), finished basement, etc.), the Commission is unable to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>11</sup>
28. The Taxpayer provided information about properties that she alleged were comparable from an online real estate resource that was significantly inconsistent, at one point calling one property “beautifully remodeled” as well as a “great candidate for sweat equity” to increase its market value. The Commission is unable to rely on this information to determine value or comparability for any of the alleged comparable properties.
29. The Commission finds and determines that the contribution of value for the second fireplace should be removed and the assessed value of the Subject Property for tax year 2016 is \$218,750.<sup>12</sup>
30. For tax year 2016 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.
31. For tax year 2016 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.

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<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>10</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>11</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on November 9, 2018, includes the following:

**NOTE:** *Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is not a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.*

<sup>12</sup> Prior assessed value \$222,600 – contribution of value of second fireplace \$3,850 = \$218,750.

32. For tax year 2017 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.
33. For tax year 2017 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.

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:

Land	\$ 18,600
<u>Improvements</u>	<u>\$200,150</u>
Total	\$218,750

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is affirmed.
4. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 39,400
<u>Improvements</u>	<u>\$202,200</u>
Total	\$241,600

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax year 2017.
9. This Decision and Order is effective on December 3, 2019.

Signed and Sealed: December 3, 2019

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Steven A. Keetle, Commissioner