

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

Sinda L. White,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0352

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

Case No: 17R 0353

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

**Background**

1. The Subject Property in Case No. 17R 0352 is a residential parcel improved with a 1,357 square foot multi-level style residence with a legal description of: Lakeview Heights Lot 240 Block 0 65 x 125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0352 at \$171,000 for tax year 2017.
3. Sinda L. White (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$138,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0352 was \$171,000 for tax year 2017.
5. The Subject Property in Case No. 17R 0353 is a residential parcel improved with a 1,184 square foot split entry style residence with a legal description of: Pheasant Run Lot 122 Block 0, 70 x 125, Omaha, Douglas County, Nebraska.
6. The County Assessor assessed the Subject Property in Case No. 17R 0353 at \$139,700 for tax year 2017.
7. The Taxpayer protested this value to the County Board and requested an assessed value of \$125,000 for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0353 was \$139,700 for tax year 2017.
9. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on July 22, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
11. Sinda L. White was present at the hearing.
12. Stan Mlotek, Real Estate Specialist with the Douglas County Assessor/Register of Deeds Office (the County Appraiser), was present for the County Board.

## Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
14. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
15. 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>
16. 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>
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
18. 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>
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

20. The Taxpayer alleged that the value of the Subject Properties was too high as compared to other properties in their respective neighborhoods.
21. The Taxpayer presented a chart containing information about nearby properties and averaging their values to determine a value for the Subject Properties.

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<sup>1</sup> See, 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* 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. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
23. “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>
24. The County Board presented the PRF for the Subject Properties as well as information regarding the qualified sales that occurred in the economic area of each of the Subject Properties used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the per square foot assessed values of the Subject Property and the other properties presented.
25. The Taxpayer did not present the Property Record Files (PRF) for any of the properties contained on the charts. Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as size, style of construction, quality, age, number of fireplaces, etc.<sup>11</sup>
26. Many of the properties contained in the Taxpayers charts were of a different style of construction than the Subject Properties.
27. The Taxpayer argued that construction style wasn’t important when determining residential values.
28. The Appraiser stated that different styles of properties had different costs of construction and different market values and that different styles of construction would not be similar for purposes of assessment.
29. A determination of actual value may be made for mass appraisal and assessment purposes by using approaches identified in Nebraska Statutes.<sup>12</sup> The approaches identified are the sales comparison approach, the income approach, the cost approach and other professionally accepted mass appraisal methods.<sup>13</sup> The comparison of assessed values of dissimilar parcels is not recognized as an appropriate approach.<sup>14</sup>
30. Additionally, “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”<sup>15</sup>

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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 July 2, 2019, 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> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>13</sup> *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

<sup>14</sup> See generally, *Lienemann v. City of Omaha*, 191 Neb. 442, 215 N.W.2d 893 (1974).

<sup>15</sup> Appraisal Institute, *The Appraisal of Real Estate*, at 308 (13<sup>th</sup> ed. 2008).

31. The Taxpayer's opinion of value was determined by averaging assessed values of neighborhood properties, without accounting for differences in style of construction or amenities. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the subject property as defined by statute. Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach. Because the Taxpayer's opinion of value was not determined by a professionally accepted appraisal approach, the Commission gives little weight to it.
32. The Taxpayer further alleged that the condition rating of the Subject Properties were not reflective of their actual condition, resulting in valuations that are too high.
33. The PRFs for the Subject Properties indicate that they both were given a quality rating of average and a condition rating of good by the County Assessor.
34. The Taxpayer discussed the condition of both Subject Properties and presented pictures of the interior and exterior of the Subject Property in Case No. 17R 0352.
35. After reviewing all of the information presented at the hearing regarding the Subject Properties, the County Appraiser indicated that the condition rating of the Subject Property in Case No. 17R 0352 should be average.
36. The information presented indicates that reducing the condition rating of the Subject Property in Case No. 17R 0352 from good to average would reduce the valuation of the improvements by \$4,500.
37. The Commission finds and determines that the assessed value of the improvements on the Subject Property in Case No. 17R 0352 is \$138,000 for tax year 2017, which when added together with the \$28,500 value of the land component would result in a total valuation of \$166,500.
38. In Case No. 17R 0352 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.
39. In Case No. 17R 0352 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.
40. In Case No. 17R 0353 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.
41. In Case No. 17R 0353 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 in Case No. 17R 0352 for tax year 2017, is vacated and reversed.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 17R 0353 for tax year 2017, is affirmed.
3. The taxable value of the Subject Property in Case No 17R 0352 for tax year 2017 is:

Land	\$ 28,500
<u>Improvements</u>	<u>\$138,000</u>
Total	\$166,500

4. The taxable value of the Subject Property in Case No 17R 0353 for tax year 2017 is:

Land	\$ 32,000
<u>Improvements</u>	<u>\$107,700</u>
Total	\$139,700

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 November 3, 2020.

Signed and Sealed: November 3, 2020

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Steven A. Keetle, Commissioner