

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

Kinze M. Williams,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0619

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

Case No: 17R 0620

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

**Background**

1. The Subject Property in Case No. 17R 0619 is a residential parcel improved with a 672 square foot ranch style residence, with a legal description of: Mossman & Wilsons Add Lot 84 Block 0 50 X 100, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property in Case No. 17R 0619 at \$14,500 for tax year 2017.
3. Kinze M. Williams, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$8,000 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0619 was \$14,500 for tax year 2017.
5. The Subject Property in Case No. 17R 0620 is a residential parcel improved with an 840 square foot ranch style residence, with a legal description of: Mossman & Wilsons Add Lot 112 Block 0 50 X 100, Omaha, Douglas County, Nebraska.
6. The County Assessor assessed the Subject Property in Case No. 17R 0620 at \$19,200 for tax year 2017.
7. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$9,000 for tax year 2017.
8. The County Board determined that the taxable value of the Subject Property in Case No. 17R 0620 was \$17,200 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 February 15, 2019, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
11. Kinze M. Williams was present at the hearing.

12. 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

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 Subject Properties are located across the street from each other in an area with many similar properties built in the same style, in the same year. The property in Case No. 17R

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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).

0620 has additional square footage at the rear of the property that makes it slightly larger than the property in Case No. 17R 0619.

21. The Taxpayer alleged that the increase in the assessed values of the Subject Properties from the prior tax year was excessive. The Taxpayer further alleged that the preliminary assessed values for the Subject Properties for the 2019 tax year were each lower than the 2017 assessed values, which demonstrates that the 2017 assessed values are too high.
22. The Nebraska Supreme Court has held that assessed value for real property may be different from year to year, dependent upon 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> For this same reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation.
23. The Taxpayer alleged that the assessed value of the Subject Properties was not supported by sales of property in the area of the Subject Properties.
24. The County Board presented the Property Record Files (PRF) for each of the Subject Properties as well as information regarding all of the qualified sales that occurred in the economic area of the Subject Property. These sales were used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
25. The qualified sales in the area support the County's determination of assessed value for the Subject Properties.
26. The Taxpayer presented information from the County Assessor's web site that demonstrates that properties with the same characteristics as the Subject Property were assessed at the same amount.
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>11</sup>
28. The Taxpayer presented information regarding a property that was assessed at a lower amount than the Subject Properties, but that property was located in a different neighborhood, was older than the Subject Properties, and had a lower condition rating than the Subject Properties and was therefore not a comparable property.
29. The Subject Property in Case No. 17R 0620 has a higher assessed value than the other Subject Property because it has more square feet of living area and a detached garage that the other Subject Property does not have.
30. The Taxpayer offered information regarding the condition of the garage which indicated that it was not structurally sound. As a result, it has begun to fall down, it is open to the outside, and the Taxpayer deemed it dangerous to enter or use even for storage as of the assessment date.

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<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988)

<sup>11</sup> See generally, *International Association of Assessing Officers, Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

31. The Commission finds and determines that, based on the information presented, the value of the detached garage on the Subject Property in Case No. 17R 0620 of should be removed from the 2017 assessed value of the Subject Property.
32. The Commission finds and determines that the assessed value of the Subject Property in Case No. 17R 0620 should be \$700 for the land component and \$16,300 for the improvement component,<sup>12</sup> for a total assessed value of \$17,000 for tax year 2017.
33. In Case No. 17R 0619 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.
34. In Case No. 17R 0619 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.
35. In Case No. 17R 0620 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.
36. In Case No. 17R 0620 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 in Case No. 17R 0619 for tax year 2017, is affirmed.
2. The taxable value of the Subject Property in Case No. 17R 0619 for tax year 2017 is:

Land	\$ 700
<u>Improvements</u>	<u>\$13,800</u>
Total	\$14,500

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property in Case No. 17R 0620 for tax year 2017, is vacated and reversed.
4. The taxable value of the Subject Property in Case No. 17R 0620 for tax year 2017 is:

Land	\$ 700
<u>Improvements</u>	<u>\$16,300</u>
Total	\$17,000

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<sup>12</sup> Using the numbers from the Cost Detail of the improvements found in the PRF the calculation would be: \$64,428 Building SF (840 sq. ft. x \$76.70 psf) - \$1,907 Concrete Slab (840 sq. ft. x \$2.27 psf) + \$1,550 (Appliance Adjustment) - \$447 (Rough In Adjustment) + \$616 (Brick Veneer, 112 units @ \$5.50 per unit) = \$64,200 Replacement Cost New (RCN). \$64,200 RCN - \$38,700 Depreciation (64,200 x 60.23% depreciation) = \$25,500. \$25,500 x 0.64 Neighborhood Adjustment = \$16,300 RCNLD (rounded).

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 February 28, 2020.

Signed and Sealed: February 28, 2020

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Steven A. Keetle, Commissioner