

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Barbara J. Limbach,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No: 17R 0244

Decision and Order Affirming the Decision
of the
Dawes County Board of Equalization

Background

1. The Subject Property is a residential parcel with a 2,148 square foot home.
2. The legal description of the Subject Property is Block 14, Lot 11 & 12 Addition: Paddocks, Crawford, Dawes County, Nebraska.
3. The Dawes County Assessor (the County Assessor) assessed the Subject Property at \$191,720 for tax year 2017.
4. Barbara J. Limbach (the Taxpayer) protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$155,937 for tax year 2017.
5. The County Board determined that the taxable value of the Subject Property was \$191,720 for tax year 2017.
6. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
7. A Single Commissioner hearing was held on June 28, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
8. The Taxpayer was present at the hearing.
9. Joe Stecher, Deputy Dawes County Attorney, was present for the County Board.

Applicable Law

10. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
11. The Commission's review of the determination of the County Board of Equalization is de novo.²

¹ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *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).

12. 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.”³ 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.”⁴
13. 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.⁵
14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
16. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

17. The Taxpayer asserted that the Subject Property was not assessed equally with similar properties in the county.
18. It is the function of the county board of equalization to determine the actual value of locally assessed property for tax purposes. In carrying out this function, the county board must give effect to the constitutional requirement that taxes be levied uniformly and proportionately upon all taxable property in the county.⁹
19. 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.¹⁰
20. For tax year 2016, the Commission determined that the assessed value of the Subject Property had been increased due to improvements, when the assessed values of other properties within the county had not increased despite improvements. As a result, the

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

⁹ *AT & T Information Systems, Inc., v. State Bd. of Equal.*, 237 Neb. 591m 467 N.W.2d 55 (1991).

¹⁰ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988).

Commission set the 2016 taxable value of the Subject Property at its equalized value rather than at its actual value.¹¹

21. The County Assessor reappraised residential properties in Crawford for tax year 2016.
22. At the hearing for tax year 2017, the Taxpayer presented evidence that the assessed values of only nine of more than 900 residential parcels in Crawford changed from tax year 2016 to tax year 2017, and that each of these properties had received a building permit for making improvements between March 12, 2013 and June 18, 2018. According to the Taxpayer, for two of these nine parcels, no work had been completed following the building permit process, and the purposes of the building permits included, on various parcels, fencing, concrete work, a shed, and a gazebo.
23. The Taxpayer presented no Property Record Files for the alleged comparable properties.
24. The Taxpayer stated that no improvements had been made to the Subject Property since January 1, 2016.
25. The Taxpayer asserts that some comparable properties, with building permits for items such as fencing, concrete work, sheds, and gazebos, had decreased in taxable value while the Subject Property, with no building permits or improvements being made, had an increase in its assessment (as compared to the prior year assessment made by the County Assessor).
26. The County Assessor assessed the actual value of the Subject Property for both tax years 2016 and 2017 at \$191,720.
27. As noted above, after these assessments had been made, the Commission ordered an *equalized* value for the Subject Property for tax year 2016 based upon information provided to the Commission in an appeal of the 2016 tax year assessment.
28. However, at the hearing for tax year 2017, the Taxpayer did not adduce competent evidence to show that the Subject Property was not assessed uniformly and proportionately with other properties. Therefore, the property should be assessed at its *actual* value rather than an *equalized* value for tax year 2017.
29. The Commission notes that, at the tax year 2017 hearing, the Taxpayer stated that she listed the Subject Property for sale at \$276,000 during calendar year 2017 or 2018.
30. 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.
31. 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.

¹¹ See *Barbara J. Limbach v. Dawes Cty. Bd. of Equal.*, Commission Case No. 16R 0212 (August 17, 2017).

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 2017, is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 4,200
<u>Improvements</u>	<u>\$187,520</u>
Total	\$191,720

3. This Decision and Order, if no further action is taken, shall be certified to the Dawes County Treasurer and the Dawes County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
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 2017.
7. This Decision and Order is effective on July 10, 2018.

Signed and Sealed: July 10, 2018

Robert W. Hotz, Commissioner