

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Barbara J. Limbach,
Appellant,

v.

Dawes County Board of Equalization,
Appellee.

Case No: 19R 0018

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family residence, with a legal description of: Block: 14 Lot: 11 & 12 Addition: Paddocks
2. The Dawes County Assessor (the Assessor) assessed the Subject Property at \$276,510 for tax year 2019.
3. Barbara Limbach (the Taxpayer) protested this value to the Dawes County Board of Equalization (the County Board) and requested an assessed value of \$180,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$246,670 for tax year 2019.
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 July 30, 2020, at Hampton Inn & Suites Hotel, 301 W. Hwy 26, Scottsbluff, Nebraska, before Commissioner James D. Kuhn.
7. Barbara J. Limbach was present at the hearing.
8. Kent A. Hadenfeldt, Dawes County Attorney, and Lindy Coleman (the Assessor) were 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 1.¹
10. The Commission’s review of a determination of the County Board of Equalization is de novo.²
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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

² 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).

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

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.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
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.⁷
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Property has been for sale for over 700 days with an asking price of \$276,000 but only had one offer of \$180,000 in 2018. The Taxpayer stated she had lowered the asking price to \$265,000 in 2019. The Assessor stated the Taxpayer was trying to sell the Subject Property privately and did not list the home with a realtor nor was the Taxpayer a licensed real estate agent.
17. The Taxpayer asserted the Subject Property has only one comparable property in Crawford; that being the Hunter property. The Hunter property is assessed at \$154,750 after being lowered by the Dawes County Board of Equalization (the BOE). The BOE lowered the Hunter property by subtracting 35% for an economic adjustment for being located in Crawford, Nebraska; likewise, the Subject Property was given the same 35% adjustment for its location in Crawford, Nebraska.
18. The Assessor stated the Hunter property is older and smaller with differing components. The Hunter property was built in 1996 and is 1,568 square foot with 1,188 square foot of basement finish whereas the Subject Property was built in 2000 and is 2,148 square foot with a fully finished basement.

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

⁴ *Id.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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. 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. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Assessor stated the Subject Property is “probably the nicest home in Crawford” and was custom built by the Taxpayer and doesn’t really have any true comparable properties in Crawford.
20. 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.
21. 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 for tax year 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 4,200
<u>Improvements</u>	<u>\$242,470</u>
Total	\$246,670

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 (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 2019.
7. This Decision and Order is effective on November 4, 2020.

Signed and Sealed: November 4, 2020

James D. Kuhn, Commissioner