

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

Patricia C. Harkreader,  
Appellant,

v.

Lincoln County Board of Equalization,  
Appellee.

Case No: 17H 0001

Decision and Order Affirming  
County Board of Equalization

Background

1. The Subject Property is the home located at 811 So. Maloney Drive with a legal description of: Lake Maloney Lot 86 (Imp Only).
2. The Lincoln County Assessor (the County Assessor) assessed the Subject Property at \$236,165 for tax year 2017.
3. The Taxpayer protested this value to the Lincoln County Board of Equalization (the County Board) and requested an assessed value of \$208,300 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$235,335 for tax year 2017.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).<sup>1</sup>
6. A Single Commissioner hearing was held on June 11, 2018, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Patricia C. Harkreader (the Taxpayer) was present at the hearing.
8. Joe W. Wright, Deputy Lincoln County Attorney, was 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.<sup>2</sup>
10. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>3</sup>

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<sup>1</sup> This appeal was originally assigned a case number indicating an appeal of a denial of a homestead exemption. Although the original case number has been retained, this is an appeal of the County Board's determination of the taxable value of the property described above.

<sup>2</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>3</sup> 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).

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 sufficient competent evidence to justify its action.”<sup>4</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>5</sup>
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.<sup>6</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>7</sup>
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.<sup>8</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>9</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer asserted that she felt the taxes on the Subject Property were too high due to issues including a lack of air conditioning on the property, no cable TV, the fact that the property is located on leased land, and the fact that the property has a large yard to care for.
17. Due to the Taxpayer’s age and fixed income, it is difficult for her to pay the property taxes on the Subject Property.
18. Although the Commission is not indifferent to the financial difficulties described by the Taxpayer, Nebraska law requires the Commission to affirm the decision of the County Board if no evidence is presented at the hearing to show that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
19. At the hearing, the Taxpayer agreed that the fair market value of the Subject Property is either equal to or greater than the taxable value as determined by the County Board.

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<sup>4</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<sup>7</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>8</sup> 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).

<sup>9</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

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

Land	\$ 0
<u>Improvements</u>	<u>\$235,335</u>
Total	\$235,335

3. This Decision and Order, if no further action is taken, shall be certified to the Lincoln County Treasurer and the Lincoln 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 June 14, 2018.

Signed and Sealed: June 14, 2018.

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James D. Kuhn, Commissioner