

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Paris Investments, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee

Case No: 12C 769

Amended Decision and Order Affirming the
Determination of the Douglas County Board
of Equalization
(Name Correction)

For the Appellant:

David Paladino,
Member, Paris Investments, LLC.

For the Appellee:

Jimmie Pinkham III,
Deputy Douglas County Attorney.

This appeal was heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel improved with a 4,827 square foot office building located at 101 N. 38th Street, Omaha, Douglas County, Nebraska. The legal description and property record card for the Subject Property are found at Exhibit 163.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of Subject Property was \$249,500 for tax year 2012.¹ Paris Investments, LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board).² The County Board determined that the taxable value for tax year 2012 was \$249,500.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 17, 2014.

¹ See, E1.

² See, E1.

³ See, E1.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁴ When the Commission considers an appeal of a decision of a County Board of Equalization, 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."⁵

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.⁶

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.⁷ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁹ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.¹⁰

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

⁴ See, Neb. Rev. Stat. §77-5016(8) (2012 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).

⁵ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁶ *Id.*

⁷ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁸ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁹ 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).

¹⁰ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”¹¹ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹² The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹³

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁴

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁵ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁶ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁷ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁸ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁹

¹¹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁵ *Id.*

¹⁶ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁷ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁸ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

David Paladino, Member of Paris Investments LLC, testified on behalf of the Taxpayer. He asserted that the County Board did not adequately account for the limited off-street parking at the Subject Property and that the County Assessor's income worksheet used an inappropriate rental rate of \$13.00.²⁰ Paladino asserted that the rental rate for the Subject Property for tax year 2012 should have been \$4.80 per square foot. He opined that the vacancy and collection loss rate should be 30%, based upon both the market for the Subject Property and the Subject Property's actual vacancy and collection loss rate. Paladino also argued for a 45% expense ratio, and a loaded capitalization rate of 12%, based upon an equity discount rate. Based upon these factors, Paladino's income approach would derive a value of \$74,336.²¹ However, Paladino separately asserted that his opinion of the actual value of the Subject Property was \$180,000.

Paladino also asserted that the County Assessor's alleged Comparables 1 and 2 were not comparable to the Subject Property. He asserted that Comparable 2 had substantial off-street parking, unlike the Subject Property, and that Comparable 3 was an owner occupied property. He also testified that some of the sales used as the Assessor's equalization comparable properties may not have been arm's length transactions.

Mark Jenkins, a commercial staff appraiser with the Assessor, was also called to testify.²² Jenkins was primarily responsible for multiple unit residential properties. He asserted that the rental rate of \$13.00 was derived from the market, but that he did not create the mass appraisal model that was used to value the Subject Property. He asserted that based upon the evidence found in the Assessment Report²³ it was his opinion that \$13.00 was an appropriate rental rate for tax year 2012, but he testified that he was uncertain of how the information found in the Assessment Report was derived.²⁴ Jenkins stated that he assumed that the income approach worksheet was created using market data.²⁵ He asserted that he was not knowledgeable about the

²⁰ See, E163:15. Paladino testified he was a real estate broker with 20 years of experience, and a certified property manager.

²¹ \$4.80 rental rate * 4,827 sq. ft. = \$23,169.60 PGI. \$23,169.60 PGI * .30 vacancy and collection loss rate = \$6,950.88 vacancy and collection loss (V&C). \$23,169.60 PGI - \$6,950.88 V&C = \$16,218.72 Effective Gross Income (EGI). \$16,218.72 EGI * .45 expense ratio = \$7,298.424 expenses. \$16,218.72 EGI - \$7,298.424 expenses = \$8,920.296 Net Operating Income (NOI). \$8,920.296 NOI / .12 cap rate = \$74,335.80 final indicated actual value.

²² Jenkins testified he was a licensed realtor and had previously worked 15 years as a real estate paralegal.

²³ Exhibit 163.

²⁴ See, E163:22,27, and 32.

²⁵ See, E163:15.

Omaha office market as of January 1, 2012. Jenkins asserted that the County Board derived the \$249,500 based upon a previous order of the Commission.²⁶

The Commission notes that a prior appeal for tax year 2010 for the Subject Property was filed with the Commission, and was resolved by a Confession of Judgment wherein the County Board and the Taxpayer agreed that the actual value of the Subject Property for tax year 2010 was \$249,500. The Commission approved the stipulation between the parties and issued an order consistent with the stipulation. The determination of actual value in that case was not based on the Commission's reasoning, but on the stipulated value by both the County Board and the Taxpayer.²⁷

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁸ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²⁹ A taxpayer must introduce competent evidence of actual value in order to successfully claim that a property is overvalued.³⁰ An owner who is familiar with his property and knows its worth is permitted to testify as to its actual value.³¹

David Paladino testified concerning his opinions of the appropriate income approach factors for the Subject Property for tax year 2012 based upon what he asserted was typical in the market and upon the Subject Property's actual factors. These factors differed from the factors shown in the Assessment Report. The Assessment Report provides a cost approach, which indicates an actual value of \$253,000,³² and an income approach, which indicates an actual value of \$312,400.³³ The Assessor did not rely upon the indications of value derived from the income approach and the cost approach, but instead adopted a "reconciled" value of \$249,500, the stipulated value in 2010. Neither party presented any evidence to indicate how the parties derived the \$249,500 stipulated value in 2010. The County Board likewise upheld the \$249,500

²⁶ See, E163:18.

²⁷ See, 10C 420 Paris Investments, LLC, v. Douglas County Board of Equalization, Confession of Judgment, dated 17 November 2011.

²⁸ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²⁹ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

³⁰ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

³¹ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

³² See, E163:8-10, 17.

³³ See, E163:18.

stipulated value, but no evidence was offered to explain the basis for this determination.³⁴ The Commission finds that the Taxpayer's opinions of assessed value and the approaches to value prepared by the Assessor amount to competent evidence to rebut the presumption in favor of the County Board's determination of taxable value.

Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.³⁵ A mere difference of opinion is insufficient to meet the Taxpayer's burden.³⁶

Several opinions of value were presented at the hearing. The credibility of all of the opinions of value was diminished by a lack of supporting market data. Paladino's opinion of value of \$180,000 was inconsistent with an opinion of value derived from his income approach factors that would have resulted in a taxable value of only \$74,336. The Assessment Report included an income approach worksheet and a cost approach summary,³⁷ however, the Assessor chose not to rely upon these calculations and instead reverted to a stipulated value from an agreement by the parties from a previous tax year.³⁸ The agreed taxable value of \$249,500 was derived from an unknown method.³⁹

The burden rests on the Taxpayer to produce clear and convincing evidence that the County Board's determination was arbitrary or unreasonable. The County Board's determination was unexplained, and was not supported by credible evidence. However, neither were any other opinions of value put forth in the hearing. Clear and convincing evidence is "that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved."⁴⁰ The evidence in this case has not produced a firm conviction that any of the opinions of value presented, including the County Board's determination, were reasonable. Therefore, based upon the evidence received in the appeal, the County Board's determination of taxable value of the Subject Property for tax year 2012 should be affirmed.

³⁴ See, E163.

³⁵ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013).

³⁶ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 125-26, 825 N.W.2d 447, 452 (2013).

³⁷ E163:8 & 15.

³⁸ E163:18.

³⁹ See, *10C 420 Paris Investments, LLC, v. Douglas County Board of Equalization*, Confession of Judgment, dated 17 November 2011.

⁴⁰ *State v. Payne-McCoy*, 284 Neb. 302, 308, 818 N.W.2d 608, 616 (2012) (Citing *State v. Floyd*, 277 Neb. 502, 763 N.W.2d 91 (2009)).

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.⁴¹
2. The taxable value of the Subject Property for tax year 2012 is \$249,500.
3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 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 2012.
7. This Decision and Order is effective for purposes of appeal on **January 9, 2015**.⁴²

Signed and Sealed: **January 9, 2015**

SEAL

Robert W. Hotz, Commissioner

Nancy J. Salmon, Commissioner

⁴¹ Assessed value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

⁴² Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.