

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

Legend Oaks, LLC,  
Appellant,

v.

Dawson County Board of Equalization,  
Appellee.

Case Nos: 16C 0022, 16C 0023

Decision and Order Reversing the Decisions  
of the Dawson County Board of  
Equalization

Background

1. The Subject Property in Case No. 16C 022 is a 21 unit low income housing tax credit complex located in the city of Lexington, Dawson County, Nebraska. The legal description of the Subject Property is found in the Case Files.
2. The Dawson County Assessor (the County Assessor) assessed the Subject Property in Case No. 16C 022 at \$810,208 for tax year 2016.
3. The Subject Property in Case No. 16C 023 is a clubhouse building associated with the low income housing tax credit complex described above. The legal description of the Subject Property is found in the Case Files.
4. The Dawson County Assessor (the County Assessor) assessed the Subject Property in 16C 023 at \$158,376 for tax year 2016.
5. The Taxpayer protested these values to the Dawson County Board of Equalization (the County Board) and requested an assessed value of \$274,364 for the Subject Property in Case No. 16C 022 and \$13,065 for the Subject Property in 16C 023 for tax year 2016.
6. The County Board determined that the taxable value of the Subject Property was \$810,208 for the Subject Property in Case No. 16C 022 and \$158,376 for the Subject Property in Case No. 16C 023 for tax year 2016.
7. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
8. A Single Commissioner hearing was held on June 22, 2017, at the Holiday Inn Express, 508 2<sup>nd</sup> Avenue, Kearney, Nebraska, before Commissioner Robert W. Hotz.
9. Andrew R. Willis was present as Counsel for the Taxpayer. Diane Adams and Cris Larson were also present for the Taxpayer.
10. Jocelyn Brasher, Deputy Dawson County Attorney and John Moore, Dawson County Assessor, were present for the County Board. Darrel Stanard was also present for the County Board.

## Applicable Law

11. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
12. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
13. 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>
14. 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>
15. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
16. 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>
17. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

18. Legend Oaks, LLC is the owner of the Subject Property. The Housing Authority of Lexington is the Managing Member of Legend Oaks, LLC.
19. The Subject Property is a "rent restricted housing project" as defined by Neb. Rev. Stat. Section 77-1333 (2016 Cum. Supp.).

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (2016 Cum. Supp.).

<sup>2</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).

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

<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. 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>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

20. The County Board did not dispute that the Taxpayer complied with the requirements of Neb. Rev. Stat. Section 77-1333 for tax year 2016 as it related to the Subject Property.
21. Specifically, the Taxpayer filed a statement (hereinafter referred to as Statement) for calendar year 2014 with the Rent-Restricted Housing Projects Valuation Committee by July 1, 2015. The statement included, among other things, actual income and actual expense data for calendar year 2014, and a description of any land-use restrictions (LURA).<sup>9</sup>
22. The Department of Revenue was required to forward the Statement filed by the Taxpayer to the Dawson County Assessor by August 15, 2015.<sup>10</sup>
23. The County Assessor is required to use an income approach calculation to determine the actual value of a rent-restricted housing project to determine the assessed valuation to be placed on the property for each assessment year. That “income-approach calculation shall be consistent with [Section 77-1333] and any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques.”<sup>11</sup>
24. The County Assessor is required to use the actual income and actual expense data filed in the Statement by the Taxpayer and the capitalization rate contained in the report issued by the Rent-Restricted Housing Projects Valuation Committee to determine an income approach calculation of value.<sup>12</sup>
25. Under mass appraisal standards, “[o]nly the reasonable and typical expenses necessary to support and maintain the income-producing capacity of the property should be allowed” under the income approach.<sup>13</sup>
26. Legislation with an effective date of August 30, 2015, specifically requires the assessor to use actual income and actual expenses when doing an income-approach calculation for rent-restricted housing projects.<sup>14</sup>
27. Based upon the information provided at the hearing on June 22, 2017,<sup>15</sup> the Commission finds that the actual income and actual expense data provided by the Taxpayer was not utilized by the County Assessor and the County Board when determining the assessed value of the Subject Property, as required by Nebraska law.<sup>16</sup>
28. If a county assessor disputes that an assessment based upon the information in the Statement provided by the Taxpayer pursuant to Neb. Rev. Stat. Section 77-1333(5) would not result in the actual value of the Subject Property, and the county board concurs with the county assessor, the county board is required to file a petition with the

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<sup>9</sup> See, Neb. Rev. Stat. Section 77-1333(5)( 2016 Cum. Supp.). See, Case File.

<sup>10</sup> Neb. Rev. Stat. Section 77-1333(5) (2016 Cum. Supp.)

<sup>11</sup> Neb. Rev. Stat. Section 77-1333(3)(2016 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. Section 77-1333(8)( 2016 Cum. Supp.) (emphasis added).

<sup>13</sup> International Association of Assessing Officers, Property Assessment Valuation, at 318 (2nd ed. 1996).

<sup>14</sup> See, 2015 Neb. Laws, LB 356, Section 1. Neb. Rev. Stat. Section 77-1333(3),(8)( 2016 Cum. Supp.).

<sup>15</sup> See, Case File.

<sup>16</sup> Neb. Rev. Stat. Section 77-1333(8)( 2016 Cum. Supp.).

Commission to consider the county assessor's utilization of another professionally accepted mass appraisal technique to determine the actual value of the rent-restricted housing project.<sup>17</sup> The County Assessor and the County Board in this case did not follow that statutory process, as prescribed by statute.

29. The Commission therefore finds that the determinations of value made by the County Assessor and the County Board in Case Nos. 16C 022 and 16C 023 were both arbitrary and unreasonable.
30. In order to determine the actual value for a rent-restricted housing project, the Commission will follow the statutory requirements of Neb. Rev. Stat. Section 77-1333, including actual income and actual expenses.
31. The capitalization rate set by the Rent-Restricted Housing Projects Valuation Committee for tax year 2016 was 6.5%. The local tax rate for the Subject Property for tax year 2016 was 2.042805%. Therefore, the loaded capitalization rate is 8.542805%.
32. Based upon the Statement filed by the Taxpayer in 2015, the net operating income of the Project for calendar year 2014 was \$16,427.<sup>18</sup>
33. Based upon the above, the income approach value of the Subject Property is \$192,290.<sup>19</sup>
34. The Taxpayer reported no income relating to the clubhouse property in Case No. 16C 023. Therefore, the income-approach value, under Neb. Rev. Stat. Section 77-1333, as applied to the clubhouse property is \$0.
35. 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. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated and reversed.

## ORDER

### IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property in Case Nos. 16C 022 and 16C 023 for tax year 2016 are Vacated and Reversed.
2. The taxable value of the Subject Property in Case No. 16C 022 for tax year 2016 is \$192,290.
3. The taxable value of the Subject Property in Case No. 16C 023 for tax year 2016 is \$0.
4. This Decision and Order, if no further action is taken, shall be certified to the Dawson County Treasurer and the Dawson County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

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<sup>17</sup> See, Neb. Rev. Stat. Section 77-1333(10)( 2016 Cum. Supp.).

<sup>18</sup> See, Case File.

<sup>19</sup> Net Operating Income / Capitalization Rate = Value. \$16,427 / .08542805 = \$192,290.

5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax year 2016.
8. This Decision and Order is effective on August 18, 2017.

Signed and Sealed: August 18, 2017

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Robert W. Hotz, Commissioner