

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Aaron J. Holt,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 11R 551

Decision & Order Affirming the
Determination of the Douglas County Board
of Equalization

For the Appellant:

James Holt,
Pro Se
Member, Ideal LLC,

For the Appellee:

Sandra Connolly,
Deputy Douglas County Attorney

Heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel at 1818 Military Avenue in Omaha, Douglas County, Nebraska. The parcel is improved with a 2,234 square foot residence used as a rental duplex. The legal description of the parcel is found at Exhibit 2, page 2. The property record card for the subject property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor (Assessor) determined that the assessed value of the subject property was \$99,800 for tax year 2011.¹ Aaron Holt (the owner at the time of the protest) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed valuation of \$44,400.² The Douglas County Board determined that the taxable value for tax year 2011 was \$99,800.³

The Taxpayer appealed the decision of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a

¹ Exhibit 1:1.

² Exhibit 2:35.

³ Exhibit 1:1.

Pre-Hearing Conference Report, as ordered by the Commission. The Commission held a hearing on August 22, 2013.

III. JURISDICTION

Aaron Holt purchased the Subject Property on November 23, 2009,⁴ and filed the protest for tax year 2011 on June 24, 2011.⁵ Aaron Holt appealed the County Board determination for tax year 2011 on September 12, 2011.⁶

James Holt appeared at this hearing. In order to determine whether James Holt was a proper party to the proceeding, he was allowed to testify regarding his interest in the Subject Property. James Holt testified that he is a member of Ideal LLC, and that Ideal LLC had purchased the Subject Property from Aaron Holt on July 18, 2013. He testified that while Aaron Holt had paid all property taxes for the Subject Property for tax year 2011, if any refund would result from this appeal, Ideal LLC would receive such refund. Under the Commission's Rules, a party is a "person directly affected by the outcome of an appeal," one who "has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal."⁷ No other evidence was received to contradict this testimony. We find that since Ideal LLC would receive a refund in the event of a reversal in this appeal, it has the requisite interest in the appeal and is a proper party to the appeal. We also find that James Holt, as a member and officer of the LLC, is a person as defined in the Commission's Rules,⁸ and is authorized to prosecute the appeal on behalf of Ideal LLC.

IV. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁹ 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

⁴ Exhibit 2:3.

⁵ Exhibit 2:35.

⁶ Case File.

⁷ Title 442, Neb. Admin. Code, ch 2, §001.36 (6/11).

⁸ Title 442, Neb. Admin. Code, ch. 2 §001.38 (6/11).

⁹ 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).

official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”¹⁰

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.¹¹

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.¹² Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹³

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁴ 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.¹⁵

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 cross appeal.”¹⁶ 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.”¹⁷

¹⁰ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹¹ *Id.*

¹² Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹³ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁴ 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).

¹⁵ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁶ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

V. 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.¹⁸

“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.”¹⁹ “Actual value, market value, and fair market value mean exactly the same thing.”²⁰ 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.²¹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²² All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²³

B. Summary of the Evidence

James Holt testified that Aaron Holt purchased the Subject Property on November 23, 2009 for \$49,000.²⁴ Subsequent to the purchase, Aaron Holt brought the Subject Property up to local building codes by installing new plumbing, and otherwise made improvements to the property in efforts to prepare for duplex tenants.²⁵ He stated that these improvements added value to the Subject Property.

James Holt complained that the Subject Property should not be compared to properties in better neighborhoods, but he provided no evidence of value of properties he believed were

¹⁸ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁹ *Id.*

²⁰ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

²¹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²² See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²³ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²⁴ Exhibit 2:3.

²⁵ Exhibit 2:35.

comparable to the Subject Property. He asserted that the County Board relied upon comparable properties that were from superior neighborhoods, but he provided no evidence that the Subject Property had in fact been valued in comparison to those properties.

The County Board relied upon a sales comparison approach conducted by the Assessor using mass appraisal multiple regression analysis.²⁶ No evidence was received that the County Board's decision was arbitrary or unreasonable.

CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also 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 by the County Board is 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 2011 is affirmed.
2. The taxable value of the Subject Property for tax year 2011 is \$99,800.
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 (2012 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 2011.

²⁶ Exhibit 2.

7. This Decision and Order is effective for purposes of appeal on August 23, 2013.

Signed and Sealed: August 23, 2013

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.