

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Landmark Management Group Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1206

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

For the Appellant:

David Paladino,
President, Landmark Management Group Inc.

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 residential parcel improved with a single family rental home located at 2511 Jones Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 165.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$33,800 for tax year 2012.¹ Landmark Management Group Inc., (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 \$33,800.³

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 18, 2014.

¹ See, E5.

² See, E5.

³ See, E5.

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 *Botdorf 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

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁰ Competent evidence is relevant and material evidence or that evidence “which the very

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).

²⁰ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

nature of the thing to be proven requires.”²¹ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²² An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²³ Separately, the Taxpayer must meet its burden to show that the County Board’s determination was unreasonable or arbitrary.²⁴ A mere difference of opinion is insufficient to meet the Taxpayer’s burden.²⁵

B. Summary of the Evidence

David Paladino testified on behalf of the Taxpayer and asserted that the Subject Property was overassessed because the County Board had not adequately taken into account both significant deferred maintenance and parking limitations. Paladino specifically asserted that the rental home should have been assigned a condition rating of worn out instead of poor. He also asserted that the Assessor’s mass appraisal model did not account for off-street parking limitations.

Larry Thomsen was called to testify by the Taxpayer. Thomsen was employed by the Assessor as a supervisor for residential assessments and the head of the Assessor’s section regarding residential appeals. Thomsen asserted that the condition of the Subject Property was rated as poor, and that the worn out designation was only used for an unlivable improvement. He stated that as of the effective date of January 1, 2010, the Subject Property was not unlivable.

Thomsen testified that a mass appraisal model was used to determine the actual value of the Subject Property as expressed by a market calculation detail which was developed for the Subject Property.²⁶ Thomsen said that the poor condition rating had a corresponding reduction of \$35,000, resulting in an actual value of \$33,760.²⁷

The Taxpayer did not offer sufficient evidence to quantify the effect of his assertions relating to the actual value of the Subject Property, and no one presented a quantified alternative opinion of the actual value for the Subject Property.

²¹ *Black’s Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²² See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²³ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

²⁴ 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).

²⁵ 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).

²⁶ Exhibit 165:10.

²⁷ Exhibit 165:10.

The Commission finds that the Taxpayer has not presented competent evidence of the actual value of the Subject Property. Further, the Commission finds that the Taxpayer did not produce clear and convincing evidence that Paladino's assertions established that the County Board's determination was unreasonable or arbitrary. The Commission finds that Paladino's assertions constitute a mere difference of opinion. The County Board's determination should be affirmed.

V. 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 decision 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.²⁸
2. The taxable value of the Subject Property for tax year 2012 is \$33,800.
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 2012.

²⁸ 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.

7. This Decision and Order is effective for purposes of appeal on December 15, 2014.²⁹

Signed and Sealed: December 15, 2014

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

²⁹ 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.