

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

PL Partnership,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1215

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

For the Appellant:

David Paladino,
Partner, PL Partnership.

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 4345 North 40th Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 172.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$4,400 for tax year 2012.¹ PL Partnership (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 \$4,400.³

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, E12.

² See, E12.

³ See, E12.

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

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

The Commission took notice of its Case File for purposes of establishing jurisdiction. The Commission notes that there are three different versions in evidence of the notice from the Douglas County Board of Equalization setting the actual value of the Subject Property: (1) Exhibit 12, indicating a County Board determination of actual value of \$4,400, with \$0 attributable to improvements;²⁰ (2) Exhibit 172, page 34, indicating a County Board determination of actual value of \$10,400, with \$6,000 attributable to improvements;²¹ and (3) a copy of the County Board's determination which accompanied the Taxpayer's appeal found in the Commission's Case File, indicating a County Board determination of actual value of \$4,400, with \$0 attributable to improvements.²² The valuation history page on the Subject Property's property record card indicates that the County Board approved an assessed value of \$10,400, with \$6,000 attributable to improvements, but that the Assessor assessed the Subject Property at only \$4,400, with \$0 attributable to improvements.²³

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. He testified that the Assessor had erroneously excluded the improvement value of \$6,000 from the assessed value when the assessed value of the Subject Property was originally determined prior to the Taxpayer's appeal to the County Board. Thomsen also testified that the Subject Property should have had an improvement value of \$6,007 according to the mass appraisal derived Market Calculation Detail.²⁴ Thomsen was unable to explain why the County Board notices indicated different determinations of taxable value, and he was unable to determine which notice was provided to the Taxpayer. His opinion of the actual value of the Subject Property was \$10,400.

David Paladino testified on behalf of the Taxpayer and asserted his opinion that the land component of the value was too high because the Subject Property was located in North Omaha. He did not dispute that the Subject Property contained an improvement. Paladino was uncertain which version of the County Board's determination he actually received in the mail.

²⁰ See, E12

²¹ See, E172:34

²² See, Case File.

²³ See, E172:10.

²⁴ See, E172:9.

C. Analysis

The Commission finds that the County Board's determination was that the actual value of the Subject Property was \$4,400, with \$0 attributable to improvements for tax year 2012.²⁵

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁶ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²⁷ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁸ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁹ Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.³⁰ A mere difference of opinion is insufficient to meet the Taxpayer's burden.³¹

Paladino asserted that the Subject Property was overassessed because the County Board had not adequately taken into account the Subject Property's dangerous neighborhood and a significant limitation of arm's length transactions for vacant land in the Subject Property's neighborhood. The Taxpayer did not offer sufficient evidence to quantify the effect of this assertion on the actual value of the Subject Property.

Thomsen also testified that \$4,400 was an unreasonable actual value for the Subject Property. Thomsen asserted that the actual value was \$10,400. The Commission finds that Thomsen's opinion of value as supported by the Assessor's Report constitutes clear and convincing evidence that the County Board's determination that the actual value of the Subject Property was \$4,400 for tax year 2012 was arbitrary or unreasonable.

However, the Commission may not order an increase in taxable value from the highest taxable value for which notice was given to the Taxpayer in these appeals.³² In these appeals,

²⁵ See, E12; See also, Case File.

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

²⁷ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁸ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁹ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

³⁰ 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).

³¹ 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).

³² 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

there is not sufficient evidence that the Taxpayer was given notice of any taxable value higher than \$4,400 for the Subject Property for tax year 2012. The Commission's Rules and Regulations do not allow the Commission to set taxable value of real property at any amount higher than previously noticed to the Taxpayer by the Assessor, the County Board, or Property Tax Administrator without specific notice from the opposing party prior to the hearing that the opposing party intends to offer evidence and assert that the taxable value for the Subject Property is higher than any previously noticed value.³³ The Commission notes that no notice as would be required by the Commission's Rules and Regulations was ever perfected. Therefore, the Commission finds that it cannot set the taxable value of the Subject Property at any amount higher than previously noticed to the Taxpayer by the Assessor, County Board, or Property Tax Administrator in these appeals.

Based on the foregoing, the Commission finds that the County Board's determination should be affirmed.

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. The Commission also finds that there is clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. However, since the County Board did not perfect notice of intent to argue higher taxable value than the County Board determination or the assessed value, 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 taxable value of the Subject Property for tax year 2012 is affirmed.³⁴
2. The taxable value of the Subject Property for tax year 2012 is \$4,400.

³³ 442 Neb. Admin. Code, ch 5, §016.02A (06/06/11).

³⁴ Taxable 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.

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.
7. This Decision and Order is effective for purposes of appeal on December 16, 2014.³⁵

Signed and Sealed: December 16, 2014

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁵ 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.