

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

PL Partnership,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1219 & 13R 502

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.

These appeals were 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 2418 Maple Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record cards for the Subject Property are found at Exhibits 186 and 187.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$29,000 for tax year 2012.¹ PL Partnership, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board), requesting an assessment of \$12,000.² The County Board determined that the taxable value for tax year 2012 was \$29,000.³

¹ See, E26.

² See, E186:31.

³ See, E26.

The Assessor determined that the assessed value of the parcel was \$28,400 for tax year 2013.⁴ The Taxpayer protested this assessment to the County Board, requesting an assessment of \$13,300.⁵ The County Board determined that the taxable value for tax year 2013 was \$28,400.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 18, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁷ 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."⁸

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.⁹

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.¹⁰ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.¹¹

⁴ See, E27.

⁵ See, E187:32.

⁶ See, E27.

⁷ See, Neb. Rev. Stat. §77-5016(8) (2014 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).

⁸ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁹ *Id.*

¹⁰ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

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

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹² 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.¹³

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.”¹⁴ 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.”¹⁵ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁶

IV. VALUATION

A. Applicable 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.¹⁷

“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.”¹⁸ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁹ Taxable value is the percentage of actual value

¹² 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).

¹³ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁴ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁷ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁸ *Id.*

¹⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.²⁰ All real property in Nebraska subject to taxation shall be assessed as of January 1.²¹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²²

B. Summary of the Evidence

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 testified that the \$1,900 land component for each year was based upon a determination first made in 1999 and carried over every year since then.²³ He testified that based on his personal experience he assumed that those values were derived based upon a sales comparison approach. Thomsen testified that the Assessor considers more than just the previous assessed land value when setting the land value for a given tax year. He asserted that a level parcel would likely be worth more than a sloping lot.

Thomsen testified that comparable sales should be valid sales, including sales between two unrelated parties without duress. He specifically testified that a lease option as part of a sale may not even be considered a sale, and that if seller financing was involved in a transaction then it is likely not an arm's length transaction. The Assessor's Comparable 3 for tax year 2012 was sold by Habitat for Humanity.²⁴ Thomsen testified that because Habitat for Humanity often sells homes with unique financing options he questioned whether the sale was an arm's length transaction. He testified that generally if a sale is not arm's length then it would not be used as a comparable sale for purposes of equalization. Thomsen asserted that while land value is a component of the assessed value, it is the total assessed value that is most important.

David Paladino, partner in the PL Partnership, testified that for tax year 2012, based on the transactions listed in the Assessor comparable sales chart, the Assessor's model includes non-arm's length transactions including sales from Habitat for Humanity, who generally operates as

²⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

²¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²³ See, E186:13 (indicating that the assessment for the land component of taxable value has not changed for the Subject Property since 1999).

²⁴ See, E186:25.

both the seller and financier, accepts community service for down payments, and does not charge interest. Paladino testified that he did not possess specific knowledge of the terms of the sale of the Assessor's Comparable 3 for tax year 2012.

Paladino also asserted that based on his personal experience the land value placed on the Subject Property was arbitrary and not supported by market data. Specifically, he asserted that less valuable parcels received higher assessed land values. Paladino asserted that the value of the land should be less than \$1,900, based on his experience and the lack of comparable sales provided by the Assessor. He testified that vacant lots do not sell often in this neighborhood, but instead are often gifted or purchased at a tax sale.

Paladino asserted that the standard deviation between the average sale prices per square foot of the Assessor's equalization comparables deviated largely, and indicated that the Assessor's comparables were not good evidence that the Subject Property's assessed value was supported by market data.

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁵ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²⁶ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁷ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁸ Separately, the Taxpayer must meet its burden to show that the County Board's determination was unreasonable or arbitrary.²⁹ A mere difference of opinion is insufficient to meet the Taxpayer's burden.³⁰

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

²⁶ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁷ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁸ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

²⁹ 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).

³⁰ 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).

David Paladino testified on behalf of the Taxpayer and asserted that the Subject Property was overassessed because the County Board had likely included non-arm's length transactions in its model, and had not based the land value on the current market as of the effective dates of each tax year. The Taxpayer did not offer sufficient evidence to quantify the effect of these assertions on the actual value of the Subject Property, and no one presented a quantified alternative opinion of the actual value for the Subject Property.

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 the County Board's determinations of value were arbitrary or unreasonable. 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 determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

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

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Property for tax years 2012 and 2013 are affirmed.³¹
2. The taxable value of the Subject Property for tax year 2012 is \$29,000.
3. The taxable value of the Subject Property for tax year 2013 is \$28,400.

³¹ 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.

4. 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.).
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 years 2012 and 2013.
8. This Decision and Order is effective for purposes of appeal on December 22, 2014.³²

Signed and Sealed: December 22, 2014

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³² 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.