

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

PL Partnership,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1220 & 13R 504

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 1,121 square foot single family rental home located at 3915 North 23rd Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record cards for the Subject Property are found at Exhibits 188 and 189.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$27,700 for tax years 2012 and 2013.¹ PL Partnership (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) each tax year. The Taxpayer requested an assessed value for tax year 2012 of \$11,000² and an assessed value for tax year 2013 of \$17,000.³ The County Board determined that the taxable value for both tax years 2012 and 2013 was \$27,700.⁴

¹ See, E28 and E29.

² E188:30.

³ See, E189:31.

⁴ See, E28 and E29.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a consolidated 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.⁵ 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."⁶

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.⁷

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.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ 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.¹¹

⁵ 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).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

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

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ 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).

¹¹ *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.”¹² 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.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

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.¹⁵

“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.”¹⁶ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁷ 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.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Id.*

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

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 Assessor assigned an average quality rating to the Subject Property, and a condition rating of fair.²¹ Thomsen testified that if the improvement had structural damage or roof damage, such damage would affect the condition of the Subject Property. Thomsen testified that if a roof and gutters needed to be replaced it could reduce the condition of the Subject Property from fair to poor. Thomsen testified that a change from fair to poor would affect the value of the Subject Property somewhere in the range of \$10,000 to \$20,000, but he did not know the specific value. Thomsen testified that an inspection of the Subject Property was performed in February, 2011.²²

Thomsen testified that the Assessor used a mass appraisal model to determine the assessed value of the Subject Property. Using a market calculation detail, the Assessor applied a \$10,000 negative adjustment to account for the fair condition rating.²³ He further asserted that a \$21,000 negative adjustment had been applied to account for the market age, or depreciation, of the Subject Property.²⁴ Thomsen testified that these factors were determined by the mass appraisal model, that he did not have personal knowledge of the how the model was constructed, but that he believed that it was based on the examination of sales from the same neighborhood as the Subject Property.

David Paladino, partner in PL Partnership, testified that the condition of the Subject Property should be changed from fair to poor because: (1) the siding, roof, and gutters needed extensive work; (2) there was a broken support beam in the home; and (3) the second floor was not level. He further stated that the land value was arbitrary because he asserted that he has no way to determine how the land value was set. Paladino asserted that the Assessor's notes from 2011,

²¹ See, E188:4 and E189:4.

²² See, E188:7 and E189:7.

²³ See, E188:10 and E189:10.

²⁴ See, E188:10 and E189:10.

which indicate cracks in the walls and ceilings, indicate that there are structural problems with the Subject Property.²⁵

C. Analysis

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 unreasonable or arbitrary.³⁰ A mere difference of opinion is insufficient to meet the Taxpayer’s burden.³¹

David Paladino asserted that the Subject Property was overassessed because the County Board had not adequately taken into account significant deferred maintenance and had utilized an arbitrary land value. The notes from an Assessor’s inspection indicate that there were cracks on the interior walls of the Subject Property.³² However, the same inspection notes also contain the Assessor’s opinion that the condition rating of the Subject Property was accurate.³³ The Taxpayer has put at issue the condition rating of the Subject Property with relevant testimony.

The Commission finds that Paladino, an owner who is familiar with his property and knows its worth, has presented competent evidence sufficient to rebut the presumption in favor of the determination by the County Board. However, 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 arbitrary or unreasonable. The evidence received is best

²⁵ See, E188:11 and E189:11 (inspection notes).

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 See, E188:11 and E189:11 (inspection notes).

³³ See, E188:11 and E189:11 (inspection notes).

characterized as two conflicting subjective opinions, one of Paladino and the other of the County Assessor, concerning the condition rating of the Subject Property. The Taxpayer did not present objective evidence sufficient to support or quantify Paladino's opinion. 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 competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. However, the Commission 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 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.³⁴
2. The taxable value of the Subject Property for both tax years 2012 and 2013 is \$27,700.
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 (2014 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 years 2012 and 2013.

³⁴ 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 22, 2014.³⁵

Signed and Sealed: December 22, 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 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.