

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Chops Holdings, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee,

Case No: 12R 1261

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

**For the Appellant:**

David Paladino,  
Member, Chops Holdings, LLC.

**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 736 square foot single family rental home located at 6615 South 27<sup>th</sup> Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 215.

**II. PROCEDURAL HISTORY**

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$22,500 for tax year 2012.<sup>1</sup> Landmark Management Group Inc., (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$10,000.<sup>2</sup> The County Board determined that the taxable value for tax year 2012 was \$22,500.<sup>3</sup>

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.

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<sup>1</sup> See, E55.

<sup>2</sup> See, E215:32.

<sup>3</sup> See, E55.

### III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.<sup>4</sup> 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."<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>8</sup>

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.<sup>9</sup> 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.<sup>10</sup>

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

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<sup>4</sup> 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).

<sup>5</sup> *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>8</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>9</sup> 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).

<sup>10</sup> *Botdorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”<sup>11</sup> 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.”<sup>12</sup> The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>13</sup>

#### 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.<sup>14</sup>

“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.”<sup>15</sup> “Actual value, market value, and fair market value mean exactly the same thing.”<sup>16</sup> 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.<sup>17</sup> All real property in Nebraska subject to taxation shall be assessed as of January 1.<sup>18</sup> All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.<sup>19</sup>

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<sup>11</sup> Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

<sup>12</sup> Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

<sup>13</sup> Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

<sup>14</sup> Neb. Rev. Stat. §77-112 (Reissue 2009).

<sup>15</sup> *Id.*

<sup>16</sup> *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

<sup>17</sup> Neb. Rev. Stat. §77-131 (Reissue 2009).

<sup>18</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>19</sup> Neb. Rev. Stat. §77-201(1) (Reissue 2009).

## **B. Summary of the Evidence**

The Taxpayer called Larry Thomsen to testify. 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's comparable properties found in Exhibit 215, page 9 are selected from the available properties in the mass appraisal model prepared by the Assessor that share similar size, location, condition, and style with the Subject Property. Thomsen testified that a multiple regression analysis was used to derive the dollar values assigned to varying real property characteristics. He testified that each neighborhood was divided into neighborhood extensions, and each neighborhood extension was valued using separate models.

David Paladino, member of Chops Holdings, LLC, testified on behalf of the Taxpayer. He asserted that the Assessor's model did not take several important characteristics of the Subject Property into account: 1) that the basement is inaccessible from the interior of the home, 2) that the location of the Subject Property is near a busy street, and 3) that the condition rating of the Subject Property should be changed from fair to poor because the interior and exterior are original to the Subject Property as built in 1895, and as a result the effective age should equal the actual age. Paladino asserted that the Assessor's comparable properties were significantly different from the Subject Property in size and location.

The Commission notes that the Assessor's market calculation detail indicates a negative adjustment of \$250 for each year of effective age.<sup>20</sup> Paladino's assertion that the effective age of the Subject Property is actually 117 years would result in a reduction of \$5,500 in value for the Subject Property or a total actual value of \$17,000.<sup>21</sup>

## **C. Analysis**

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.<sup>22</sup> Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."<sup>23</sup> A taxpayer must introduce competent evidence of

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<sup>20</sup> See, E215:10.

<sup>21</sup>  $(117 - 95) * \$250 = \$5,500$ .

<sup>22</sup> See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

<sup>23</sup> *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

actual value of its property in order to successfully claim that a property is overvalued.<sup>24</sup> An owner who is familiar with his property and knows its worth is permitted to testify as to its value.<sup>25</sup> Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.<sup>26</sup> A mere difference of opinion is insufficient to meet the Taxpayer's burden.<sup>27</sup>

David Paladino asserted that the Subject Property was overassessed because the County Board had not correctly calculated the effective age of the Subject Property and had not adequately taken into account the negative effects of limited basement entry and location near a busy street. The Taxpayer did not offer sufficient evidence to quantify the effect of Paladino's assertions on the actual value of the Subject Property.

Therefore, the Commission finds that Paladino's assertions amounted to a mere difference of opinion. The Commission further 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.

## 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 County Board's determination of the taxable value of the Subject Property should be affirmed.

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<sup>24</sup> See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

<sup>25</sup> See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

<sup>26</sup> 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).

<sup>27</sup> 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).

## 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.<sup>28</sup>
2. The taxable value of the Subject Property for tax year 2012 is \$22,500.
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 year 2012.
7. This Decision and Order is effective for purposes of appeal on December 23, 2014.<sup>29</sup>

Signed and Sealed: December 23, 2014

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner

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<sup>28</sup> 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.

<sup>29</sup> 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.