

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Landmark Management Group, Inc.,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 10C 422 & 10C 423

Order Affirming Douglas County Board of
Equalization

For the Appellant:

David J. Paladino,
Managing Member of Landmark
Management Group, Inc.,
Pro Se.

For the Appellee:

Matthew J. Boever,
Deputy Douglas County Attorney.

Heard before Commissioners Thomas D. Freimuth and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property includes two adjacent commercial parcels located in Omaha, Douglas County, Nebraska. The parcel that is the subject of appeal in Case Number 10C 422 is improved with a six-unit, 5,220 square foot apartment complex located at 4612 Redman Avenue, and the Case Number 10C 423 parcel is improved with nine-unit, 9,180 square foot apartment complex located at 4616 Redman Avenue. The legal description of each parcel is contained in the Property Record Card found at Exhibit 2 in each case.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the parcel in Case Number 10C 422 was \$93,000 for tax year 2010.¹ Landmark Management Group, Inc. (herein referred to as the “Taxpayer”) protested this assessment to the Douglas County Board of Equalization (herein referred to as the “County Board”) and requested an assessed valuation of

¹ E1, Case 10C 422.

\$41,863.² The County Board determined that the assessed value for tax year 2010 was \$93,000 in Case Number 10C 422.³

The Douglas County Assessor determined that the assessed value of the parcel in Case Number 10C 423 was \$164,000 for tax year 2010.⁴ The Taxpayer protested this assessment to the County Board and requested an assessed valuation of \$62,795.⁵ The County Board determined that the assessed value for tax year 2010 was \$164,000 in Case Number 10C 423.⁶

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”). Prior to the hearing, the parties exchanged exhibits and stipulated to the receipt of exchanged Exhibits 2 and 3 in each case. The Commission held a consolidated hearing on October 30, 2012.

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

² E3, Case 10C 422.

³ E1, Case 10C 422.

⁴ E1, Case 10C 423.

⁵ E3, Case 10C 423.

⁶ E1, Case 10C 423.

⁷ See, Neb. Rev. Stat. §77-5016(8) (2010 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.*

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

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

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.¹⁶

"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

¹⁰ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

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

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) (2012 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

77-1371, (2) income approach, and (3) cost approach.”¹⁷ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁸ 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.¹⁹ All real property in Nebraska subject to taxation shall be assessed as of January 1.²⁰ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²¹

B. Summary of the Evidence

The County’s “Assessment Report” found at Exhibit 2 in each case includes a cost approach valuation of the parcel in Case Number 10C 422 (\$173,000) and the parcel in Case Number 10C 423 (\$299,400).²² The Assessment Reports also include a “Reconciled” value for each case, which equals the County Board’s final determinations for tax year 2010 (i.e., \$93,000 in Case Number 10C 422, and \$164,000 in Case Number 10C 423).²³ The Commission notes that the assessed value of each parcel has remained constant since 2005 when the County Assessor conducted a reappraisal of the Subject Property.²⁴

Greg Weisheipl, an employee of the County Assessor’s Office, testified that the County often relies on the income valuation approach in the case of income-producing parcels such as the Subject Property. He was unable to explain why the County did not include income approach valuations in the Assessment Report for each Subject Property. Mr. Weisheipl did state, however, that he believed that the County Board arrived at valuations significantly lower than the County Assessor’s cost approach valuations due to the adverse impact of crime in the Subject Property’s neighborhood.

The Commission notes that income approach information was not provided by the Taxpayer to Mark Jenkins, an employee of the County Assessor’s Office who prepared the Assessment Report for each parcel.²⁵ The Commission also notes that the Referee documentation included in

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

¹⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

²⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

²² E2:15, Case No. 10C 422; E2:14 Case No. 10C 423.

²³ E2:15, Case No. 10C 422; E2:14 Case No. 10C 423.

²⁴ E2:16, Case No. 10C 422; E2:15 Case No. 10C 423. The Commission notes that the Case No. 10C 422 parcel’s assessment increased from \$72,000 to \$93,000 in 2005. The Case No. 10C 423 parcel’s assessment increased from \$108,000 to \$164,000 in 2005.

²⁵ E2:15, Case No. 10C 422; E2:14 Case No. 10C 423.

each Assessment Report indicates that the County considered the Taxpayer's rent roll information for tax year 2010, but that the Taxpayer did not provide expense information during the protest process.²⁶

The "Salient Facts and Conclusions" page of the Assessment Reports indicates that the County Board's final determinations for each Subject Property parcel amounts to approximately \$17.80 per square foot.²⁷ Thus, while the County Board equalized the Subject Property parcels on a per square foot basis, the evidence is not clear regarding the valuation approach used to derive the \$17.80 per square foot valuation.

David J. Paladino testified on behalf of the Taxpayer. While the County Board did not rely on the County Assessor's cost valuation for each Subject Property parcel as noted above, he stated that it was unreasonable or arbitrary to rely on any method other than the income approach. He also asserted that the County Board overvalued the Subject Property due to insufficient consideration of the adverse impact of crime in the area. Other than reference to the high crime rate in the Subject Property neighborhood, the Commission did not receive evidence from the Taxpayer in support of its assertion.²⁸

C. Analysis

Beyond equalizing the Subject Property parcels at approximately \$17.80 per square foot, the Commission is mindful that the basis of the County Board's determinations for tax year 2010 is not clear. The County Board, however, need not put on any evidence to support its final determinations unless the Taxpayer establishes that the valuations are unreasonable or arbitrary.²⁹ The Commission finds that the Taxpayer did not provide sufficient clear and convincing evidence that the County Board's determination for each Subject Property parcel is unreasonable or arbitrary for tax year 2010.

²⁶ E2:33, Case No. 10C 422; E2:32, Case No. 10C 423.

²⁷ E2:2, Case No. 10C 422 ($\$93,000 \div 5,220$ total improvement area sq. ft. = \$17.80); E2:2, Case No. 10C 423 ($\$164,000 \div 9,180$ total improvement area sq. ft. = \$17.80). The Assessment Reports state that the total improvement area for each parcel includes a garden lower level finished basement.

²⁸ The Taxpayer offered rent roll information as Exhibit 4 in each case, but the Commission sustained the County's objection to the receipt of this evidence due to failure to meet the 30-day exchange deadline.

²⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998). See, *Garvey Elevators, Inc. v. Adams County Bd. of Equalization*, 621 N.W.2d 518, 261 Neb. 130 (Neb. 2001).

The Commission notes that the County Clerk and the County Assessor are required to maintain a record regarding the basis of the County Board's property valuation decisions.³⁰ As indicated previously, the assessed value of each Subject Property parcel has remained constant since 2005, when a reappraisal was conducted by the County Assessor.³¹ Thus, it is possible that a review of 2005 records would be required to determine the basis of the County Board's valuation determinations for the Subject Property parcels in tax year 2010.

The Commission did not receive evidence regarding the County Board's decision in 2005 or beyond. Thus, an analysis of the basis of the County Board's decision is not possible.

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 are affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2010 are affirmed.³²
2. The assessed value of the Subject Property for tax year 2010 is: \$93,000 for Case Number 10C 422, and \$164,000 for Case Number 11C 423.
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 order is denied.

³⁰ Neb. Rev. Stat. § 77-1502(5) (2012 Cum. Supp.).

³¹ E2:16, Case No. 10C 422; E2:15 Case No. 10C 423.

³² 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.

5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2010.
7. This order is effective for purposes of appeal on January 30, 2014.

Signed and Sealed: January 30, 2014.

Thomas D. Freimuth, Commissioner

SEAL

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2012 Cum. Supp.), other provisions of Nebraska Statute and Court Rules.

Commissioner Salmon Concurring in the result only.

I would find that the Taxpayer did not provide sufficient clear and convincing evidence that the County Board's determination for each Subject Property parcel is unreasonable or arbitrary for tax year 2010. Further the Taxpayer provided no opinion of value for the Subject Property and no quantification of the impact of any of the conditions which he alleged impacted the value of the Subject property.

I would conclude 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. I would also conclude that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For these reasons I concur that the decisions of the County Board are affirmed.

Nancy J. Salmon, Commissioner