

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

St. Mary's Apartments, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 13R 495

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

For the Appellant:

David Paladino,
Member, St. Mary's Apartments, LLC.

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 1,802 square foot single family rental home located at 520 South 21st Avenue, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 318.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$83,000 for tax year 2013.¹ St. Mary's Apartments, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$23,100.² The County Board determined that the taxable value for tax year 2013 was \$83,000.³

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 19, 2014.

¹ See, E158.

² See, E318:33.

³ See, E158.

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 arbitrary or unreasonable.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) (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).

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) (2014 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 *Bottof 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. 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.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) (2014 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5018(1) (2014 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 Subject Property was most recently inspected by the Assessor on January 31, 2005. David Paladino, Member of St. Mary's Apartments, LLC testified that he paid \$245,000 for the Subject Property and another parcel immediately adjacent to the Subject Property on October 18, 2006.²⁰ He testified that the Subject Property is isolated from other residential parcels and that there is no off-street parking associated with the Subject Property, with both sides of the street having metered parking. He asserted that the Subject Property was so unique that it would be nearly impossible to come up with any truly comparable properties. Paladino testified that he had made the 2006 purchase of the Subject Property and the adjoining lot with the intent to construct condominiums or apartments, but after determining that there was not enough demand for those types of properties in the market he decided that he would lose less if he did not build.

The Commission received the testimony of Larry Thomsen, an employee of the Assessor as a supervisor for residential assessments and the head of the Assessor's section regarding residential appeals. He testified that even given Paladino's assertions, he would not make reductions to the Subject Property's actual value without hard evidence that the reduction was necessary. Thomsen testified that a lack of off-street parking would affect the value of a residential rental property, but that the lack of off-street parking was not taken into account in the Assessor's mass appraisal model.

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²¹ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²² A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²³ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁴ Separately, the Taxpayer must meet its burden to show that the County Board's

²⁰ See, E318:3.

²¹ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²² *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²³ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁴ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

determination was arbitrary or unreasonable.²⁵ A mere difference of opinion is insufficient to meet the Taxpayer's burden.²⁶

David Paladino testified that the Subject Property was overassessed because the County Board had not adequately taken into account the lack of off-street parking and the fact that the Subject Property was surrounded by non-residential parcels in the mass appraisal model used to determine the actual value of the Subject Property. Paladino did not provide quantifiable evidence of the impact of these limitations on the value of the Subject Property. Larry Thomsen agreed that a lack of off-street parking would affect the actual value of the Subject Property, but he also did not quantify its effect on the value of the Subject Property.

The Commission finds that Paladino's testimony is competent evidence sufficient to rebut the presumption in favor of the County Board's determination of taxable value since he was the owner of the Subject Property who was familiar with the worth of the property. However, the Commission also finds that the Taxpayer did not produce clear and convincing evidence that Paladino's assertions established that the County Board's determination of taxable value was arbitrary or unreasonable. The Commission finds that Paladino's assertions, without objective quantifiable evidence, constitute a mere difference of opinion.

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 of the taxable value of the Subject Property. However, the Commission also finds that there is not clear and convincing evidence that the County Board's determination of the taxable value of the Subject Property was arbitrary or unreasonable.

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

²⁵ 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).

²⁶ 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 2013 is affirmed.
2. The taxable value of the Subject Property for tax year 2013 is \$83,000.
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 2013.
7. This Decision and Order is effective for purposes of appeal on January 12, 2015.²⁷

Signed and Sealed: January 12, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

²⁷ 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.