

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chops Holdings, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1274

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.

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 3,008 square foot single family rental home located at 3120 Woolworth Avenue, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 226.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$76,400 for tax year 2012.¹ Chops Holdings, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$55,000.² The County Board determined that the taxable value for tax year 2012 was \$76,400.³

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, E66.

² See, E226:31.

³ See, E66.

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 *Botdorf 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. 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

David Paladino, member of Chops Holdings, LLC, testified that the mass appraisal model utilized by the Assessor to determine the actual value of the Subject Property did not accurately measure what was happening in the market at the relevant time because it did not appropriately take into account the exterior features of the improvements. He also asserted that the model did not address the proximity of the Subject Property to a busy street. Paladino testified that the neighborhood changed dramatically just a few blocks from the Subject Property. He also asserted that the alleged comparable properties contained in the Assessment Report were not truly comparable to the Subject Property. Paladino asserted that the Subject Property was built as a rental property and that fact diminished the quality of the improvement. He asserted that the quality of the Subject Property should be changed from average to fair. Paladino asserted that he had difficulty renting the Subject Property because of its large size and the lower quality of the structure. He asserted that the Assessor's information in the property record card was not accurate. Paladino expressed an opinion of value of \$50,000 for tax year 2012.

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 asserted that the comparable properties shown in the Assessment Report did not contain other properties with similar brick exterior siding because differences in the type of exterior of rental properties generally have little impact on the sales price.²⁰ Thomsen opined that in the market for residential homes, brick siding is considered superior, but that factor is not built into the Assessor's mass appraisal model. He indicated that certain physical characteristics of properties are considered by the Assessor when developing the mass appraisal model. Thomsen testified that the characteristics and factors that affect the assessed value as derived by the mass appraisal model are all found in the market calculation detail in the property record file.²¹

Thomsen testified that the condition of a property is generally determined by the amount of deferred maintenance of the improvement based upon a physical inspection, and that unless the owner consents to an internal inspection, most inspections include only the exterior of the

²⁰ See, E226:9.

²¹ See, E226:10, 16, 22, and 29.

property. He testified that the type and condition of exterior features could affect the condition rating. The Commission notes that the property record card for the Subject Property indicates two different measurements for the square footage of living area of the Subject Property: (1) 3,008 square feet in the Residential Sales Comparable Inventory and Account Value Summary;²² and (2) 2,504 square feet in the Market Calculation Detail.²³ Thomsen posited that this difference could have occurred from a measurement of the Subject Property after the assessed value of the Subject Property was determined by using the model.

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁴ Competent evidence is relevant and material evidence or that evidence “which the very nature of the thing to be proven requires.”²⁵ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁶ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁷ Separately, the Taxpayer must meet its burden to show that the County Board’s determination was arbitrary or unreasonable.²⁸ A mere difference of opinion is insufficient to meet the Taxpayer’s burden.²⁹

David Paladino testified on behalf of the Taxpayer and asserted that the Subject Property was overassessed because the County Board had relied upon the Assessor’s opinion of value which was based on inaccurate information including an incorrect quality rating. Paladino expressed an opinion of value of \$50,000 for tax year 2012.

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

²² See, E226:9.

²³ See, E226:10.

²⁴ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²⁵ *Black’s Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁶ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁷ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

²⁸ 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).

²⁹ 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).

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. It is apparent from the record that Paladino and the Assessor disagree about the quality rating of the Subject Property. Both offered subjective testimony regarding the quality rating of the Subject Property and how it should be determined. The Commission finds that Paladino's assertions constitute a mere difference of opinion.

Paladino also asserted that the factors utilized in the Assessor's mass appraisal model were not accurate, or that the model excluded important factors that would affect sales prices of real property in the Subject Property's market area. However, Paladino did not provide any further evidence to support these assertions. Paladino also failed to explain through quantifiable evidence how these alleged deficiencies would individually affect the actual value of the Subject Property. The Commission finds that Paladino's assertions, without other objective data, 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. However, 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 taxable value of the Subject property for tax year 2012 should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the value of the Subject Property for tax year 2012 is affirmed.
2. The taxable value of the Subject Property for tax year 2012 is \$76,400.
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 January 9, 2015.³⁰

Signed and Sealed: January 9, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁰ 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.