

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chops Holdings, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 13R 476

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 1,396 square foot single family rental home located at 1714 Missouri Avenue, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record card for the Subject Property is found at Exhibit 308.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$40,000 for tax year 2013.¹ Chops Holdings, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$30,000.² The County Board determined that the taxable value for tax year 2013 was \$40,000.³

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, E148.

² See, E308:33.

³ See, E148.

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 condition rating of the Subject Property should be changed from fair to poor based upon comments found in the Assessment Report prepared by the Assessor following an inspection of the Subject Property on January 18, 2011.²⁰ These condition comments included that some siding had fallen off of the exterior of the improvement, that the kitchen and bathrooms were in fair condition, that there were uneven floors throughout the home, and that there were cracks present in interior walls and ceilings due to foundation issues.²¹

Paladino also asserted that the proximity of the Subject Property to a busy street was not taken into consideration in the Assessor's mass appraisal model to determine the actual value of the Subject Property. He asserted that the location on a busy street negatively impacts the actual value of the Subject Property but the Taxpayer offered no evidence to quantify the asserted negative impacted.

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. Thomsen testified that in his opinion a house on a busy street is generally worth less than a similar house on a street without the same traffic. Thomsen conceded that the effect of the busy street on the actual value of the Subject Property was not accounted for by the model. Thomsen indicated that he could not quantify the impact of the busy street on the actual value of the Subject Property.

Thomsen testified that the assessed value of the Subject Property was determined by utilizing a mass appraisal model. The Market Calculation Detail for the Subject Property indicates an actual value of \$52,324.²² However, the same Market Calculation Detail also indicates a "reconciled" value of \$40,000, without explanation.²³ Thomsen testified that the assessment of \$40,000 was carried forward from an order of the Commission from a prior tax year.²⁴ Account Notes in the Assessment Report indicate that a previous appeal was filed with the Commission

²⁰ See E308:6.

²¹ See, E308:6.

²² E308:11.

²³ See. E308:11.

²⁴ See E308:12.

and that the Commission's order reduced the taxable value from \$45,000 to \$40,000.²⁵ Thomsen indicated that the reduction may have taken into account the negative impact of the busy street on the Subject Property's actual value.

The Commission notes that a prior appeal for tax year 2011 for the Subject Property was filed with the Commission, and was resolved by a Confession of Judgment between the parties the Taxpayer and the County Board, wherein the parties stipulated that the actual value of the Subject Property for tax year 2011 was \$40,000. The Commission approved the stipulation between the parties and issued an order consistent with the stipulation. The determination of actual value in that appeal was not based upon the Commission's reasoning, but on the stipulated value by both the County Board and the Taxpayer.²⁶

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²⁷ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²⁸ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁹ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.³⁰ Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.³¹ A mere difference of opinion is insufficient to meet the Taxpayer's burden.³²

David Paladino asserted that the Subject Property was overassessed because the County Board had not adequately taken into account significant deferred maintenance and the proximity of the Subject Property to a busy street. The Commission finds that Paladino's testimony is

²⁵ See, E308:6.

²⁶ See, 11R 605 Landmark Group, Chops Holding, Inc., v. Douglas County Board of Equalization, Confession of Judgment, dated November 13, 2012.

²⁷ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²⁸ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁹ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

³⁰ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

³¹ 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).

³² 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).

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 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. Paladino asserted that the condition rating of the Subject Property should be reduced from fair to poor, but he offered no objective evidence to support or quantify this assertion. The Assessment Report indicates that the Assessor inspected the Subject Property and assigned a fair condition rating for the Subject Property that differed from Paladino's opinion of the condition rating as poor.³³ Further, Paladino asserted that the Subject Property should receive a negative adjustment for its proximity to a busy street, but Paladino did not provide any objective evidence indicating that any negative impact on the Subject Property's actual value was not already taken into account in the Assessor's determination to reduce the actual value of the Subject Property from its \$52,324 model-derived value to \$40,000. The Commission finds that Paladino's assertions, without supporting objective 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 taxable value. However, the Commission also finds that there is not clear and convincing evidence that the County Board's determination of value was arbitrary or unreasonable.

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

³³ See, E308:4.

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 \$40,000.
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 9, 2015.³⁴

Signed and Sealed: January 9, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁴ 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.