

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

New Holland, Inc.,
Appellant,

v.

Hall County Board of Equalization
Appellee

Case No: 10C-241 & 11C 110

Decision Reversing the Determination
of the Hall County
Board of Equalization

For the Appellant:

Jarrold Crouse,
Baylor, Evnen, Curtiss, Gritmit & Witt, LLP

For the Appellee:

Jack Zitterkopf
Deputy Hall County Attorney

Heard before Commissioners Hotz and Salmon

I. THE SUBJECT PROPERTY

The Subject Property is a commercial parcel located in Hall County, Nebraska. The parcel consists of 132.52 acres, (E2:2), zoned for light industrial use, (E33:7), and improved with several industrial buildings totaling 949,794 square feet. E33:7. The legal description of the parcel is found at Exhibit 1. The property record card for the subject property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Hall County Assessor determined that the assessed value of the subject property was \$23,868,532 for both tax years 2010 and 2011. New Holland, Inc. (New Holland) protested this assessment to the Hall County Board of Equalization (County Board) and requested an assessed valuation of \$11,000,000 for tax years 2010 and 2011. The County Board determined that the assessed value for tax years 2010 and 2011 was \$23,868,532. (E1).

New Holland appealed the determinations of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties stipulated to exchanged exhibits and stipulated that actual value of the subject property should be the same for both tax years. The Commission held a consolidated hearing on February 13, 2012.

III. STANDARD OF REVIEW

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

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.

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. Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.). Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. 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) . 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. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

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.” Neb. Rev. Stat. §77-5016(8) (2011 Supp.). 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. Neb. Rev. Stat. §77-5016(6) (2011 Supp.).

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.

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

Neb. Rev. Stat. §77-112 (Reissue 2009). “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002). 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. Neb. Rev. Stat. §77-131 (Reissue 2009). All real property in Nebraska subject to taxation shall be assessed as of January 1. See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009). All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).

“[T]he value of the opinion of an expert witness is no stronger than the facts upon which it is based.” *Lindsay Manufacturing Co., v. Universal Surety Co.*, 246 Neb. 495, 519 N.W.2d 530 (1994) citing *Mutual of Omaha v. Broussard*, 233 Neb. 916, 448 N.W.2d 600 (1989). The weight to be given to expert testimony, and the credibility of witnesses, is a fact question to be decided by the fact finder at trial. *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equalization*, 8 Neb.App. 582,

596-97, 597 N.W.2d 623, 635 (Neb.App. 1999), citing *Coffey v. Mann*, 7 Neb.App. 805, 585 N.W.2d 518 (1998).

B. Summary of the Evidence

The County Board offered the expert opinion testimony of Darrell Stanard, a licensed real estate appraiser who has held that designation since approximately 1996. Stanard was involved in the county's assessment of the subject property at various times and on multiple levels of the assessment process. He testified his appraisal company had been hired by the Hall County Assessor in prior years and for tax year 2010. He described the work he had done for the Hall County Assessor's office in prior years in relation to the subject property as "pick-up" work, which had included following up on building permits, (E35), which in turn triggered inspections, measurements, and new values. For the 2010 assessment, Stanard explained that the data he had collected for the subject property had been provided to the County Assessor, who had input the data into TerraScan, a computer-assisted mass appraisal system which incorporates costing and depreciation tables from the Marshall Valuation Service. Stanard testified that the specific data he provided to the County Assessor had included his subjective judgment that the improvements of the subject property should be characterized as heavy industrial, as opposed to light industrial.

Stanard explained that he evaluated the results after the data had been entered into TerraScan, and that as relating to the cost approach, the replacement cost new less depreciation of the subject property was more than forty million dollars.¹ Stanard testified that based upon his knowledge and experience he had the opinion that this value was too high, so he adjusted the cost approach value to \$23,868,532. Stanard did not explain the basis for this opinion. However, he testified that he manually adjusted depreciation factors for many of the improvements of the subject property. These manual adjustments resulted in most components of the improvements on the subject property receiving depreciation of 81% regardless of the respective ages of these improvements. E2:2-4. Improvements receiving a depreciation of 81% ranged in age from year built 1969 to year built 2004. E2:2-4. Stanard testified on cross examination that this 81% depreciation was based upon a "mixture of things" that had occurred to the subject property since 1969. However, he did not testify that the 81% depreciation was

¹ Other than Stanard's testimony, there was no evidence in the record that displayed this result.

applied because of maintenance to any of the older improvements (that might otherwise have resulted in a common effective age regardless of chronological age).² Rather, he explained, it was because this particular percentage, as applied to the selected improvements, brought the replacement cost new less depreciation value to where he believed it should be, based upon his knowledge and experience. Stanard testified that once he made these manual adjustments he recommended an assessed value of the subject property to the County Assessor of \$23,868,532 for tax year 2010.

Subsequent to Stanard's recommendation to the County Assessor, notice was sent to New Holland of the assessed value of the subject property at \$23,868,532 for tax year 2010. New Holland protested that value. For the protest proceedings for tax year 2010, the County Board, per its authority under Neb. Rev. Stat. §77-1502.01, hired Stanard's company to referee the protest filed by New Holland. An appraiser for Stanard's company functioned as the Referee, who recommended no change, and another appraiser for Stanard's company functioned as the Referee Coordinator, or supervisor, who concurred with the Referee's recommendation. E6:1-4. The County Board agreed with the recommendation and determined that value was \$23,868,532. E1:1. After New Holland appealed to the Commission, the County Board hired Stanard to testify in support of the determination of value by the County Board in this appeal hearing. Stanard did not conduct a fee appraisal, nor did he prepare an appraisal report.

Stanard also testified that he considered seven sales in Lincoln and Omaha, Nebraska for comparison to the subject property. E13. The improvements of these sales ranged in area from 185,890 square feet to 398,224 square feet. E13. Four of these buildings had a last use as a distribution warehouse; and the remaining sales were last used as a storage warehouse, light manufacturing, and heavy manufacturing respectively. E13. When comparing these sales to the subject property, Stanard testified he made no adjustments for any differences between the sales

² The effective age of an improvement is the "age of property that is based on the amount of observed deterioration and obsolescence it has sustained, which may be different from its chronological age." *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), Appraisal Institute, p 93. "The maintenance standards of owners or occupants can influence the pace of building depreciation. If one building is better maintained than other buildings in its market area, the effective age of that building may be less than its actual age. If a building is poorly maintained, its effective age may be greater than its actual age. If a building has received typical maintenance, its effective age and actual age may be the same." *The Appraisal of Real Estate*, Thirteenth Edition (2001), Appraisal Institute, p. 412.

and the subject property other than for the differences in the square footage.³ And on cross examination, Stanard admitted that these seven sales were not comparable to the subject property.

New Holland offered the expert opinion testimony of Robin Hendricksen, a licensed real estate appraiser who has held that designation since 1981. Hendricksen testified that he had conducted a fee appraisal of the subject property and prepared an appraisal report (Exhibit 33) in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP).

Hendricksen conducted a physical inspection of the land and the buildings of the subject property on October 26, 2010. E33:10. His report described 132.52 acres of land, and three main buildings, as well as multiple miscellaneous improvements. E33:21-27.

He testified that the subject property was originally designed as, and was being used during the applicable tax years for, industrial manufacturing (to assemble agricultural machinery), that it was zoned for light manufacturing, and that it had the physical characteristics of light industrial manufacturing. Hendricksen was of the opinion that the uses of the subject property were consistent with the municipal zoning regulations, which set the permitted principal uses of its zone of (M-1) Light Manufacturing Zone to include “[m]anufacture, processing, assembly, fabrication ...” E33:79.

The Commission notes that Hendricksen stressed in his testimony that his ultimate value opinion for the subject parcel recognized the difference between the value of the parcel as used by New Holland, which was higher than the market value of the parcel based upon highest and best use.⁴

Real property has both a use value and a market value, which may be the same or different depending on the property and the market. For example, an older manufacturing plant that is

³ When analyzing comparable sales, adjustments are “[m]athematical changes made to basic data to facilitate comparison or understanding. When dollar adjustments are used, individual differences between comparables and the subject property are expressed in terms of plus or minus dollar amounts; with percentage adjustments, individual differences are reflected in plus or minus percentage differentials.” *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), Appraisal Institute, p. 6.

⁴ The value in use of a particular parcel is “[t]he value a specific property has to a specific person or specific firm as opposed to the value to persons or the market in general.” *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), Appraisal Institute, p. 306.

still used by the original owner may have considerable use value to that owner but only a nominal market value for another use.

The Appraisal of Real Estate, Thirteenth Edition (2001), Appraisal Institute, p. 27.

In his appraisal report, Hendricksen conducted a cost approach and a sales comparison approach to value the subject property.⁵ When analyzing the value of the land, he used eight sales, and gave an estimate of value of \$995,000 for the 132.52 acres as vacant. E33:52-56. This value estimate differed to a fairly small degree from the County Board's determination of value of the land of \$955,469. E1:1.

In his cost approach to value the improvements, Hendricksen testified that he used a segregated cost method,⁶ also known as a unit-in-place method, where he valued each building component, or unit, separately to arrive at a replacement cost new. E33:56-58. His cost estimation was based upon all of the improvements of the subject property having the physical characteristics of light industrial construction.⁷ In his determination, the total cost new estimate for the three main buildings, plus all miscellaneous improvements, was \$42,932,615. E33:58. He then considered and deducted for physical depreciation, (E33:58-62), functional obsolescence, (E33:63), and external obsolescence, (E33:63). Hendricksen described how he accounted for the value of the components of the improvements based upon physical characteristics and age. He arrived at a value indication of the replacement cost new less depreciation of all improvements of \$11,942,312. E33:63. His cost approach total value indication was \$12,935,000 for the land plus improvements. E33:63.

Hendricksen also explained the sales comparison approach that he included in his appraisal report. E33:64-74. He testified that due to the somewhat unique nature of the subject property, (its area of nearly one million square feet), he evaluated sales with improvements consisting of at least 500,000 square feet. He stressed that because of size (area) disparities, economies of scale

⁵ Hendricksen testified that he considered, but did not use, an income approach to value the subject property.

⁶ The unit-in-place method, or segregated cost method, is a "cost-estimating method in which total building cost is estimated by adding together the unit costs for the various building components as installed." *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), Appraisal Institute, p. 300.

⁷ Hendricksen emphasized that there were no uses of the subject property consistent with that of heavy industrial, such as, for example, machining or smelting.

should be considered.⁸ Further, he identified the competing market area as national, (E33:10), rather than as local or regional, in part, because of what he testified would be a limited number of buyers who could utilize the entire facility.

His sales comparison approach analyzed seven sales, all of which were properties located outside of Nebraska. E33:64-74. The improvements involved in these sales ranged in area from 618,900 square feet to 1,547,917 square feet. In his appraisal report, an analysis was made of the adjustments Hendricksen made to the comparables for use in his sales comparison approach to valuing the subject property. E33:73-74. Hendricksen testified that he put a “great deal of weight” on the sales comparison approach in his overall estimation of value of the subject property. His opinion of value using the sales comparison approach was \$12,345,000. E33:74.

The final value estimate of the appraisal report was \$12,500,000. E33:3, E33:76. The effective date of the appraisal report was January 1, 2010. E33:11. Hendricksen testified that his opinion of market value of the fee simple of the subject property was \$12,500,000 for both 2010 and 2011. The Commission finds that the testimony of Hendricksen was credible, and his appraisal report is to be given great weight.

V. CONCLUSION

The Commission finds that the determination of actual value by the County Board was arbitrary or unreasonable as it was based only upon the knowledge and experience of an appraiser but not on a professionally accepted mass appraisal method as required by Neb. Rev. Stat. §77-112 (Reissue 2009).

The Commission also finds that the opinion of value by Hendricksen is 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 further finds that the opinion of value by Hendricksen is clear and convincing evidence that the County Board’s value determination was arbitrary or unreasonable.

⁸ Economies of scale are generally defined as the “[r]eduction in cost of production per unit due to a large number of items produced.” *The Dictionary of Real Estate Appraisal*, Fourth Edition (2002), Appraisal Institute, p 92.

For all of the reasons set forth above, the decision of the County Board is vacated and reversed.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Hall County Board of Equalization determining the value of the subject property for tax years 2010 and 2011 is vacated and reversed.⁹
2. The assessed value of the subject property for both tax years 2010 and 2011 is \$12,500,000.
3. This decision and order, if no appeal is timely filed, shall be certified to the Hall County Treasurer and the Hall County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2011Supp.)
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax years 2010 and 2011.
7. This order is effective for purposes of appeal on February 27, 2012

Signed and Sealed: February 27, 2012

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2011 Supp.), other provisions of Nebraska Statute and Court Rules.

⁹ Assessed value, as determined by the county board of equalization, 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.