

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Landmark Group, St. Marys Apartments,
LLC,
Appellant,

v.

Douglas County Board of Equalization.
Appellee.

Case No: 11C 508

Decision Affirming Douglas County Board
of Equalization

For the Appellant:

David J. Paladino,
Managing Member of Landmark Group,
St. Marys Apartments, LLC.
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 is a 7,700 square foot commercial parcel located at 526 South 21st Avenue, Omaha, Douglas County, Nebraska. The legal description of the parcel is found at Exhibit 2. The Property Record Card for the Subject Property is found at Exhibit 2.

II. PROCEDURAL HISTORY

The Douglas County Assessor determined that the assessed value of the Subject Property was \$13,900 for tax year 2011. Landmark Group, St. Marys Apartments, LLC (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 \$642. The County Board determined that the assessed value for tax year 2011 was \$13,900.¹

The Taxpayer appealed the decision 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, 3 and 4. The Commission held a hearing on October 30, 2012.

¹ E1.

III. STANDARD OF REVIEW

The Commission’s review of the determination by a County Board of Equalization is de novo.² 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.”³

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.⁴

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.⁵ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷ 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.⁸

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

² See, Neb. Rev. Stat. §77-5016(8) (2012 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).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ 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).

⁸ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”⁹ 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.”¹⁰

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.¹¹

“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.”¹² “Actual value, market value, and fair market value mean exactly the same thing.”¹³ 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.¹⁴ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁵ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁶

B. Summary of the Evidence

David J. Paladino, Managing Member of Landmark Group, St. Marys Apartments, LLC, testified on behalf of the Taxpayer and asserted that the County Board overvalued the Subject Property. In support of this assertion, the Taxpayer submitted documentation that included the

⁹ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

¹⁰ Neb. Rev. Stat. §77-5016(6) (2012 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹² *Id.*

¹³ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁴ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁵ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁶ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

sale and assessment history of a property located at 501 South 28th Street, which is approximately seven blocks from the Subject Property.¹⁷ This documentation includes a screenshot from the Douglas County Assessor's website (a Property Profile was not submitted), together with a Real Estate Transfer Statement (Form 521) regarding the sale of the property in July 2009.¹⁸ The Taxpayer did not submit a fee appraisal of the Subject Property at the hearing before the Commission.

The Taxpayer's documentation indicates that the property located at 501 South 28th Street is a 6,422 square foot parcel that sold for \$9,750 in July 2009 ($\$9,750 \div 6,422$ square feet = \$1.52 per sq. ft.). The documentation also indicates that the parcel was assessed at \$2,800 in tax year 2011 ($\$2,800 \div 6,422$ square feet = \$.44 per sq. ft.). Based on this information, the Taxpayer asserted that the actual value of the Subject Property amounted to \$3,388 for tax year 2011 ($7,700$ sq. ft. x \$.44 = \$3,388).

The County Board submitted an Assessment Report for the 7,700 square foot Subject Property at the hearing for tax year 2011, which is found at Exhibit 2. The Assessment Report's Property Profile states that the Taxpayer purchased the Subject Property for \$100,000 in 2002.¹⁹ Paladino testified that the building situated on the Subject Property was destroyed by a fire shortly after the 2002 purchase, and that the parcel is now improved only with pavement on approximately half of the lot. He also testified that the paved parking lot is rented two months annually to nearby Omaha Children's Museum.

The Property Profile indicates that the Subject Property is classified by the County as an unimproved vacant land under "Abstract Code" 1100.²⁰ Thus, the County Board's \$1.80 per square foot ($\$13,900 \div 7,700$ sq. ft.) determination for tax year 2011 does not include the Subject Property's improvement component (i.e., the paved parking lot) for tax year 2011.

The Assessment Report contains a one-page "PVAL" document that indicates that the Subject Property's land component valuation has remained constant at \$13,900 from tax year 2000 through tax year 2011.²¹ The Assessment Report also indicates that the County's land valuation is based on comparable vacant land sales in the Subject Property's area.²²

¹⁷ E4.

¹⁸ E4:1 & E4:4.

¹⁹ E2:4.

²⁰ E2:4; See, "Salient Facts and Conclusions" found at Exhibit 2, page 2.

²¹ E2:10.

²² E2:6.

The Assessment Report includes three unimproved comparables that sold in the three-year look-back period for the following per square foot amounts: \$1.64, \$1.97 and \$2.00 (as indicated previously, the Subject Property is assessed at \$1.80 per sq. ft.).²³ The Taxpayer asserted that these sales were not comparable to the Subject Property.

The Assessment Report also includes three equalization comparables located in the area of 22nd & Howard,²⁴ which is within two blocks of the Subject Property.²⁵ These comparables, which are improved with paved parking lots according to the respective Property Profiles contained in Exhibit 2, were assessed at \$5.20 per square foot in tax year 2011. The Taxpayer asserted that these properties are not comparable to the Subject Property, in part because the nearby company known as Energy Systems has made strategic acquisitions thereof.

C. Valuation Analysis

The Taxpayer's \$3,388 (7,700 sq. ft. x \$.44 per sq. ft.) opinion of value relies on the use of the 2011 tax year assessed value of a property located seven blocks from the Subject Property. This approach is not a professionally accepted mass appraisal technique for determining the actual value of real property under Nebraska Statutes section 77-112.

The valuation approaches identified under Nebraska Statutes section 77-112 include the sales comparison approach, the income approach, the cost approach, and other professionally accepted mass appraisal methods.²⁶ The Taxpayer's use of assessed values of properties near the Subject Property is not identified as an appropriate approach under Nebraska Statutes section 77-112. Additionally, the Taxpayer did not provide evidence that this approach is a professionally accepted mass appraisal or fee appraisal technique. Therefore, while assessed values can provide the basis for relief in the equalization context as discussed below, the Commission is unable to find that the Taxpayer's \$3,388 opinion of value constitutes clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.

The Taxpayer's opinion of value also relies in part on the use of the sale of the property located at 501 South 28th Street. As indicated previously, the Taxpayer's documentation

²³ E2:7

²⁴ E2:8.

²⁵ E2:9

²⁶ Neb. Rev. Stat. §77-112 (Reissue 2009).

indicates that this property sold for \$9,750 in July 2009 ($\$9,750 \div 6,422$ square feet = \$1.52 per sq. ft.).²⁷

The sales comparison approach has a defined systematic procedure that requires, among other actions, that the appraiser “[l]ook for differences between the comparable sale properties and the subject property using all appropriate elements of comparison. Then adjust the price of each sale property, reflecting how it differs, to equate it to the subject property or eliminate that property as a comparable. This step typically involves using the most similar sale properties and then adjusting for any remaining differences.”²⁸

The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.²⁹ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371, which provides that “[c]omparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value.”³⁰

The Taxpayer’s opinion of value does not provide analysis regarding adjustments based on the elements of comparison referenced above. The Commission also notes that a Property Profile for the alleged comparable was not received in evidence to enable sufficient sales comparison approach evaluation, and that the screen-shot from the Douglas County Assessor’s website indicates that the July 2009 sale of the parcel was designated as a non-arms-length transaction.³¹

V. EQUALIZATION

A. Law

“Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”³² Equalization is the process of ensuring that all taxable property is placed on the

²⁷ E4.

²⁸ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute, 2008, at pgs. 301 - 302.

²⁹ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008) at 141.

³⁰ Neb. Rev. Stat. §77-1371 (Reissue 2009).

³¹ E4:1 (see “Exclusion Reason” entry on bottom row).

³² *Neb. Const.*, Art. VIII, §1.

assessment rolls at a uniform percentage of its actual value.³³ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.³⁴ In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.³⁵ Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.³⁶ Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.³⁷ The constitutional requirement of uniformity in taxation extends to both rate and valuation.³⁸ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”³⁹ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”⁴⁰ “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁴¹

B. Equalization Analysis

The Taxpayer asserted that the Subject Property was overvalued in comparison to the 2011 assessed valuation of the property located at 501 South 28th Street, which is approximately seven blocks from the Subject Property. In support of this assertion, the Taxpayer submitted a screenshot from the Douglas County Assessor’s website for this property, which indicates that it was assessed at \$.44 per square foot in tax year 2011.⁴²

³³ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

³⁴ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

³⁵ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

³⁶ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

³⁷ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

³⁸ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

³⁹ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

⁴⁰ *Id.* at 673, 94 N.W.2d at 50.

⁴¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴² E4:1 & E4:2.

As indicated previously, an order for equalization requires evidence that either: (1) similarly situated properties were assessed at materially different values;⁴³ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property regardless of similarity indicates that the Subject Property was not assessed at a uniform percentage of market value.⁴⁴

A Property Profile for the alleged comparable was not received in evidence to sufficiently evaluate whether the Subject Property is similarly situated in comparison to the alleged comparable. Therefore, the Commission finds that the property submitted by the Taxpayer is not similarly situated or comparable for equalization analysis purposes.

The Commission further finds that the Taxpayer did not produce sufficient evidence of the market value of the property submitted for comparison, in order to determine whether the ratio of assessed to market value was less than 100% for tax year 2011. In this regard, the Commission notes that the screen-shot from the Douglas County Assessor's website indicates that the July 2009 sale of the parcel was designated as a non-arms-length transaction, which indicates that the \$9,750 purchase price might not be a valid indicator of market value.⁴⁵

VI. 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 determination. 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 appeal of the Taxpayer is denied.

⁴³ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

⁴⁴ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

⁴⁵ E4:1 (see "Exclusion Reason" entry on bottom row).

VII. 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 2011 is affirmed.⁴⁶
2. The assessed value of the Subject Property for tax year 2011 is: \$13,900
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.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2011.
7. This order is effective for purposes of appeal on January 30, 2014.

Signed and Sealed: January 30, 2014.

Thomas D. Freimuth, Commissioner

SEAL

Nancy J. Salmon, Commissioner

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.

⁴⁶ 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.