

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

J T L CORPORATION,)	
)	
Appellant,)	CASE NO. 03C-163
)	
vs.)	
)	FINDINGS AND FINAL ORDER
LANCASTER COUNTY BOARD OF)	GRANTING RELIEF
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Terry K. Barber, Esq.
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For the Appellee: Michael E. Thew, Esq.
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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

J T L Corporation ("the Taxpayer") owns a 1.13 acre irregular tract of land legally described as Irregular Tract Lot 114, NE¼ of Section 18, Township 10, Range 7, Lancaster County, Nebraska. (E9:4). The tract of land is improved with a restaurant known as "The Steak House." The restaurant has a gross building area of 6,097 square feet which was built in beginning in the 1940's. (E6:44). The restaurant has 70 parking stalls and the lot is improved with sidewalks, lights, and a sign structure. (E6:37 - 38).

The Lancaster County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$521,300 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$419,972. (E8:9). The Lancaster County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 26, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 13, 2003, which the Board answered on October 8, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on June 28, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Lincoln, Lancaster County, Nebraska, on November 8, 2004. The Taxpayer appeared at the hearing through Sheryl Snyder, an officer, director and co-owner of the Corporation. Ms. Snyder was accompanied by counsel, Terry K. Barber, Esq. The Board appeared through Michael E. Thew, Chief Deputy, Civil Division, Lancaster County Attorneys Office. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Commission afforded each of the Parties the opportunity to adduce evidence and argument. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to adduce any clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Commission denied the Motion.

II. ISSUES

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making

its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer adduced no evidence of actual or typical expenses, or actual or typical capitalization rates for purposes of calculating value under the Income Approach.
2. The Taxpayer adduced no evidence of the value of the land component, the quality of construction, the costs of construction, and no evidence of depreciation for the subject property for purposes of calculating value under the Cost Approach.
3. The Taxpayer adduced no evidence concerning sales of comparable property for purposes of calculating value under the Sales Comparison Approach.
4. The Board's evidence includes expert testimony establishing that the subject property's actual or fair market value was \$497,000 as of the assessment date. (E6:3).

V.
ANALYSIS

The Taxpayer alleged that the Board's value exceeded actual or fair market value and further alleged that the assessed value was not equalized with comparable properties. (E8:9). The Taxpayer's only evidence of actual or fair market value is an opinion that the actual or fair market value for the subject property for tax year 2003 was the same as the 2002 assessed value (\$419,972). (E8:14). The prior year's assessment is not relevant to the subsequent year's valuation. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

The Taxpayer failed to adduce any evidence from which the subject property's value could be determined under the Cost, the Income or the Sales Comparison approach. There is, therefore, no evidence from the Taxpayer from which the actual or fair market value of the subject property could be determined.

The Taxpayer alleged that the subject property's assessed value was not equalized with comparable property. The Taxpayer adduced evidence concerning the assessed value of one property in support of this allegation. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2nd Ed., International Association of

Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2nd Ed., 1996, p.103.* "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . " *Property Assessment Valuation, 2nd Ed., 1996, p. 98.* Most adjustments are for physical characteristics. *Property Assessment Valuation, 2nd Ed., 1996, p.105.*

The Taxpayer's "comparable" property is a 4.21 acre tract of land improved with a Class "S" building built in 1972. (E4:25 - 26). The exterior walls of this building are of "light metal" with wall heights of 17 feet in one area and 14 feet in another area. (E4:26). The gross building area for this property is 16,985 square feet. The property is used for the sale of commercial trucks.

The subject property is a 1.13 acre tract of land improved with a Class "D" building with an exterior wall built of hardboard, concrete block, and native stone. (E8:12). The wall height is 9 feet (E8:12), and the building is divided into a lounge, dining area with a seating capacity of 190, a kitchen and food preparation area, and a private dining area, a walk-in cooler, and a utility room. (E8:10 - 11). The subject property has a gross building area of 6,097 square feet.

The "comparable" property differs significantly from the subject property in terms of age, size of the improvements, size of the land component, quality of construction, condition, style, and use. Nothing in the record provides any evidence of the adjustments necessary to render the "comparable" property truly comparable to the subject property.

"Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax . . . If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

The Taxpayer adduced evidence that one commercial property has a different per square foot assessed value than the subject property. (E4). There is no evidence that the level of assessment of the Taxpayer's comparable is other than 100% of

actual or fair market value, and, as set forth above there is no evidence that the Taxpayer's "comparable" is truly "comparable" to the subject property. There is no evidence of a lack of equalization of assessed value for the subject property.

A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence aimed at discrediting the valuation methods utilized by a county assessor fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Board adduced expert opinion evidence that the subject property's actual or fair market value was \$497,000 as of the assessment date. (E6:3). The Board's expert, a Certified General Appraiser licensed by the State of Nebraska, testified that his opinion of value was based on and prepared in accordance with the *Uniform Standards of Professional Appraisal Practice*. (E6:10). The Taxpayer adduced no evidence rebutting this expert testimony. The Board's expert's opinion of value, \$497,000, is clear and convincing evidence, and is the most credible evidence of value in the record. The Board's determination of value, \$521,300, must accordingly be vacated and reversed.

VI.
CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or 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 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. Neb. Rev. Stat. §77-112 (Reissue 2003).

5. The Board's determination of value, \$521,300, is not supported by the evidence, and must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Lancaster County Board of Equalization's decision denying the protest is vacated and reversed.
2. The Taxpayer's real property legally described as irregular tract Lot 114, NE¼ of Section 18, Township 10, Range 7, Lancaster County, Nebraska, more commonly known as The Steak House, shall be valued in the amount of \$497,000 for tax year 2003.
3. Any request for relief by any Party not specifically granted by this order is denied.
4. This decision, if no appeal is filed, shall be certified to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 Neb. Laws, L.B.973, §51).

5. This decision shall only be applicable to tax year 2003.
6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 8th day of November, 2004. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 9th day of November, 2004.

SEAL

Wm. R. Wickersham, Chair