

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

MARCEL J. VINDUSKA and JEAN G.)	CASE NO.	04R-55
VINDUSKA,)		04R-56
)		04R-57
Appellants,)		
)	FINDINGS AND FINAL ORDER	
vs.)	DISMISSING APPEAL IN CASE NO.	
)	04R-55 AND DENYING	
DOUGLAS COUNTY BOARD OF)	RELIEF IN REMAINING CASES	
EQUALIZATION,)		
)		
Appellee.)		

Appearances:

For the Appellant: Marcel J. Vinduska
19506 South Highway 31
Gretna, NE 68028

For the Appellee: Christine A. Lustgarten, Esq.
Chief Deputy, Civil Division
Douglas County Attorneys Office
909 Civic Center
Omaha, NE 68183

Before: Commissioners Hans, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Marcel J. Vinduska and Jean G. Vinduska own three tracts of land in Douglas County, Nebraska. (E5:2; E5:5; E5:8). The tract of land in Case Number 04R-55 is approximately 40,260 square feet in size and is legally described as LOT 30 BLOCK 0 S½ VAC T ST ADJ & ALL LT 30, Q ST ACRES, Douglas County, Nebraska. There are no improvements on this tract of land. (E5:2). The tract of land in Case Number 04R-56 is approximately 40,260 square feet in size and is legally described as LOT 29 BLOCK 0 S½ VAC T ST ADJ & ALL LOT 29, Q ST ACRES, Douglas County, Nebraska. This tract of land

is unimproved. (E5:5). The tract of land in Case Number 04R-57 is approximately 55,756 square feet in size and is legally described as LOT 28 BLOCK 0 S½ VAC T ST ADJ E 50 FT LOT 28 & IRR .18 AC ADJ ON W & LOT 28 IRREG, Q ST ACRES, Douglas County, Nebraska. This tract of land is improved with a building assessed at "salvage value." (E5:8).

The Douglas County Assessor ("the Assessor") determined that in Case Number 04R-55 the subject property's actual or fair market value was \$40,300 as of the January 1, 2004, assessment date. (E1). Marcel Vinduska ("the Taxpayer") timely protested that determination and alleged that the subject property's actual or fair market value was \$1,000. (E1). The Douglas County Board of Equalization ("the Board") denied the protest. (E1).

The Assessor determined that in Case Number 04R-56 the subject property's actual or fair market value was \$80,500 as of the assessment date. (E2). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$1,000. (E2). The Board denied the protest. (E2).

The Assessor determined that in Case Number 04R-57 the subject property's actual or fair market value was \$220,600 as of the assessment date. (E3). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$74,900. (Ee). The granted the protest in

part and determined that the subject property's actual or fair market value was \$168,300 as of the assessment date. (E3).

The Taxpayer appealed each of the Board's decisions on August 18, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 23, 2004, which the Board answered on August 26, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on November 22, 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 cases for a hearing on the merits of the appeals in the City of Lincoln, Lancaster County, Nebraska, on January 26, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Christine A. Lustgarten, Esq., Chief Deputy, Civil Division, Douglas County Attorneys Office. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Lore was excused from the proceedings.

The Commission afforded each of the Parties the opportunity to present evidence and argument as required by law. The Taxpayer moved to dismiss the appeal in Case Number 04R-55. (E4:1). The Taxpayer also testified that the value of the improvements in Case Number 04R-57 (\$1,000) was not at issue. The Taxpayer adduced further testimony and rested. The Board

moved to dismiss the remaining cases at the close of the Taxpayer's case-in-chief for failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's Motion to Dismiss was denied and the Board then rested without calling any witnesses.

II. ISSUES

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

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004)). 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 values were

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 subject property in Case Number 04R-56 is assessed at \$2.00 per square foot. (E5:5). The land component of the subject property in Case Number 04R-57 is assessed at \$3.00 per square foot. (E5:8).
2. The Taxpayer had no independent opinion of actual or fair market value but adopted as his opinion of value the \$1.22 per square foot sale price of one property offered as a "comparable" by the Board.
3. The Taxpayer adduced no other evidence from which the actual or fair market value of either tract could be determined.

**V.
ANALYSIS**

The Taxpayer alleged that the increase in assessed values over the prior year's assessment was excessive and unreasonable. 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 also alleged that the assessed values exceeded actual or fair market value as of the assessment date. (E2; E3). The Taxpayer initially had no opinion of actual or fair market value for either tract of land and adduced no evidence from which the actual or fair market value of either parcel could be determined.

The Taxpayer later adopted as his opinion of value the \$1.22 per square foot sale price of one property offered as a "comparable" by the Board. (E5:27; E5:26; E12). Under professionally accepted mass appraisal methods, no two parcels of land are exactly alike. "They might be identical in size and physical characteristics, but each parcel has a unique location and is likely to differ from other parcels in some way. Typical differences requiring adjustments are in time of sale, location, and physical characteristics." *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 76. When considering the land component of real property, "comparable" properties should share similar use (residential, commercial, industrial, or agricultural), physical characteristics (size, shape, and topography), and location. *Id.*, pp. 70 - 76. The Taxpayer testified that in his opinion the sold property was similar to the subject properties. The record discloses that the "comparable" property is not located on 70th Street or 72nd Street (a main transportation thoroughfare) and

that there are other differences between that vacant tract of land and the subject properties.

The Taxpayer also criticized the comparability of the other properties adduced by the Board as "comparables." It is true that there are differences between these properties, which sold at a significantly higher per square foot price than the subject properties assessed values. The Taxpayer adduced no evidence of the adjustments necessary to account for the differences between the "comparable" properties which sold for more than the assessed value of the subject properties. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proof. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer also failed to describe the adjustments necessary to account for the differences between the "comparable" property which sold for less than the assessed value of the subject properties. The Commission, from the record before it, cannot conclude that the single property adopted as a "comparable" property by the Taxpayer is truly "comparable" to the subject properties. In the absence of evidence accounting for the differences between the "comparable" property and the

subject properties, the evidence of the price paid for one tract of land does not rise to the level of clear and convincing evidence necessary to overcome the statutory presumption in favor of the Board. The Taxpayer adduced no other evidence from which the actual or fair market value of the subject properties could be determined.

The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decisions to deny the Taxpayer's protests as to the value of the land component in each appeal maintained must accordingly be affirmed.

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) (Cum. Supp. 2004).
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, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Reissue 2003).

6. The Taxpayer failed to adduce clear and convincing evidence that the Board's decisions were incorrect and either unreasonable or arbitrary. The Board's decisions must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Taxpayer's Motion To Dismiss the appeal in Case Number 04R-55 is granted.
2. The Douglas County Board of Equalization's Orders setting the assessed values of the subject properties for tax year 2004 in each remaining appeal is affirmed.
3. In Case Number 04R-56, the Taxpayer's real property legally described as Lot 29, Block 0 and the S½ VAC T ST ADJ, Q Street Acres, Douglas County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$80,500
Improvements	\$ -0-
Total	\$80,500

4. In Case Number 04R-57, the Taxpayer's real property legally described as Lot 28, Block 0 and the S½ VAC T ST ADJ, Q Street Acres, Douglas County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land \$167,300

Improvements \$ 1,000

Total \$168,300

5. Any request for relief by any Party not specifically granted by this order is denied.

6. This decision, if no appeal is filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).

7. This decision shall only be applicable to tax year 2004.

8. 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 26th day of January, 2005. The same were approved and confirmed by Commissioner Reynolds and I and are therefore deemed to be the

Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5)
(Cum. Supp. 2004).

Signed and sealed this 26th day of January, 2005.

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.