

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

ANDERAND L.L.C., A Nebraska)	
Limited Liability Company,)	
)	CASE NO. 04C-158
Appellant,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	DISMISSING APPEAL
ADAMS COUNTY BOARD OF)	AT THE CLOSE OF THE
EQUALIZATION,)	APPELLANT'S CASE-IN-CHIEF
)	
Appellee.)	

SUMMARY OF DECISION

Anderand L.L.C. appeals the Adams County Board of Equalization's order denying the Company's 2004 valuation and equalization protest. The Board moved to dismiss the appeal at the close of the Company's case-in-chief for failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**I.
ISSUES**

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

II.
STATEMENT OF THE CASE

The Company owns a 35,084 square foot tract of land legally described as Lot 1, Anderand Subdivision, City of Hastings, Adams County, Nebraska. (E10:2). The tract of land is improved with two buildings. The first is a 5,850 square foot building used as a gas station/convenience store with a food court. (E10:2). The food court is occupied by three fast food vendors: Taco Bell; Nick's Gyros; and Joe's China Express. The second building is a single-bay drive-through car wash with heated bay. The buildings were built in 1996. The Company borrowed \$1,050,000 to fund construction of the commercial property. The total cost of development was between \$1,300,000 and \$1,400,000.

The Adams County Assessor determined that the subject property's actual or fair market value was \$975,205 as of the January 1, 2004, assessment date. (E1). The Company timely protested that determination and alleged that the subject property's actual or fair market value was \$482,580. (E1). The Board denied the Company's protest. (E1).

The Company appealed the Board's decision on August 23, 2004. The Commission served a Notice in Lieu of Summons on the Board, which the Board answered. The Commission issued an Amended Order for Hearing and Amended Notice of Hearing to each of the Parties. 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 Kearney, Buffalo County, Nebraska, on July 6, 2005. The Company appeared at the hearing through Alan M. Anderson, one of the Company's managers, and with counsel, Richard W. Witt, Esq.. The Board appeared through Charles A. Hamilton, Deputy Adams County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

III. APPLICABLE LAW

The Company 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) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). 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 Company, 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 Company adduced no evidence of actual or fair market value for either the subject property or any of the "comparable" properties.
2. The Company adduced no evidence of the level of assessment for either the subject property or any of the "comparable" properties.

**V.
ANALYSIS**

The Company alleges that the subject property's assessed value is not equalized with comparable properties. 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. *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999).

The taxpayer whose property alone is taxed at 100 per cent has the right to have his assessment reduced to the percentage of that value at which others are taxed even though this is a

departure from the requirement of statute. *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984). The taxpayer has the right to relief where "the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied." *Kearney Convention Center, supra*. The taxpayer's burden is to show by clear and convincing evidence that the value placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive. *Cabela's Inc., supra*.

The Company failed to adduce any evidence of actual or fair market value for either the subject property or any of the "comparable" properties. There is, therefore, no evidence of the level of assessment for either the subject property or for any of the comparable properties.

The Company contends that its requested 51% reduction in assessed value is supported by the assessed values of five "comparable" properties. "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. *Id.* at 103.

"Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . ." *Id.* at 98. Most adjustments are for physical characteristics. *Id.* at 105.

The subject property's actual or fair market value may be established using assessed values of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a Company to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable and that the assessed values of the properties represent actual or fair market value. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). The Company asserts that the subject property's assessed value represents actual value. The Company further asserts that the assessed values of "comparable" properties do not represent actual value. The Company concludes by asserting that the assessment to actual value ratio for the comparables differs from the assessment to actual value ratio for the subject property. The Company has not proven actual value for the comparable properties and has not met its burden of proof.

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, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. These presumptions remain until the Company 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 Company. *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 Company has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. 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) (Cum. Supp. 2004).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Company's real property legally described as Lot 1, Anderand Subdivision, City of Hastings, Adams County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$107,965
Improvements	\$867,240
Total	\$975,205

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 Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.

6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 6th day of July, 2005. Commissioner Hans dissented. The Findings and Order were, however, approved and confirmed by Commissioners Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 8th day of July, 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, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.