

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

HUSKER MOTORS, INC., A	)	
Nebraska Corporation,	)	
	)	CASE NO. 04C-157
Appellant,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	DISMISSING APPEAL AT THE CLOSE
SCOTTS BLUFF COUNTY BOARD OF	)	OF THE CORPORATION'S
EQUALIZATION,	)	CASE-IN-CHIEF
	)	
Appellee.	)	
	)	

**SUMMARY OF DECISION**

Husker Motors, Inc. ("the Corporation") owns certain commercial property in the City of Scottsbluff, Scotts Bluff County, Nebraska. The Corporation protested the Scotts Bluff County Assessor's proposed 2004 value for the property to the Scotts Bluff County Board of Equalization. The Board denied the Corporation's protest, and the Corporation appeals.

**I.  
ISSUES**

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

**II.  
STATEMENT OF THE CASE**

The Corporation owns a 1.11 acre tract of land legally described as Part of Lot 4, Block 3, East Portal Addition, in the

City of Scottsbluff, Scotts Bluff County, Nebraska. (E34:13).

The tract of land is improved with one commercial building. The value of the improvements are not at issue. (E1).

The Assessor determined that the actual or fair market value of the subject property's land component was \$199,689 as of the January 1, 2004, assessment date. (E1:1). The Corporation timely protested that determination and alleged that land component's actual or fair market value was \$122,100. (E1:1). The Board denied the protest. (E1:1).

The Corporation 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 Order for Hearing and Notice of Hearing and served a copy of the Order and Notice on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 28, 2005. The Corporation appeared at the hearing through Norma J. Ray, the Corporation's President. The Board appeared through Douglas Warner, Esq., Acting Scotts Bluff County Attorney. Commissioners Hans, Lore, and Reynolds heard the appeal. Commissioner Wickersham was excused from the proceedings. Commissioner Reynolds served as the presiding officer.

The Board, at the close of the Corporation's case-in-chief, moved to dismiss the appeal for failure to adduce any evidence of actual or fair market value.

### **III. APPLICABLE LAW**

The Corporation 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 either 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 Corporation, 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 value of the improvements are not at issue.
2. The Corporation adduced no evidence of actual or fair market value for the land component of the subject property.

**V.**  
**ANALYSIS**

The Corporation's evidence included references to the prior year's assessments and the historical percentage changes in the subject property's assessed values. The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *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). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

The Corporation also alleged that the subject property's assessed value was not equalized with comparable properties. (E1:2). Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value. 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 Corporation adduced no evidence of actual or fair market value of the land component. In the absence of such evidence, the Corporation cannot meet the burden of proof imposed by state law concerning either valuation or equalization. The Board under these circumstances need not put on any evidence to support its valuation of the subject property. *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).

## **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 Corporation 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 Corporation. *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 Corporation has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's Motion to Dismiss must accordingly be granted.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Scotts Bluff County Board of Equalization's Motion to Dismiss is granted and this appeal is dismissed with prejudice.
2. The Corporation's real property legally described as Part of Lot 4, Block 3, East Portal Addition, City of Scottsbluff, Scotts Bluff County, Nebraska, more commonly known as 1906 East 20<sup>th</sup> Place, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$199,689
Improvements	\$226,293
Total	\$425,982
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 Scotts Bluff County Treasurer, and the Scotts Bluff 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 28<sup>th</sup> day of September, 2005. The same were approved and confirmed by Commissioners Hans and Reynolds 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 29<sup>th</sup> day of September, 2005.

**SEAL**

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*Mark P. Reynolds, Vice-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.