

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

PATRICIA C. GIZINSKI, Adams)	
County Assessor,)	
)	CASE NO. 04C-151
Appellant,)	
)	
vs.)	FINDINGS AND FINAL ORDER
)	DISMISSING APPEAL AT THE CLOSE
ADAMS COUNTY BOARD OF)	OF THE ASSESSOR'S
EQUALIZATION,)	CASE-IN-CHIEF
)	
and)	
)	
TAZ L.L.C., A Nebraska Limited)	
Liability Company,)	
)	
Appellees.)	

SUMMARY OF DECISION

Patricia C. Gizinski, the Adams County Assessor appeals the Adams County Board of Equalization's order granting Taz L.L.C.'s 2004 valuation protest. The Company moved to dismiss the appeal at the close of the Assessor's case-in-chief for failure of the Assessor 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 grant the Taxpayer'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

Taz L.L.C. ("the Company") owns a 12.30 acre tract of land legally described as Lot 7, Block 3, Hastings Industrial Park West, City of Hastings, Adams County, Nebraska. (E28:2). The tract of land is improved with a steel commercial building with a gross building area of 157,972 square feet built in 1977. (E10:6).

The Adams County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$2,650,175 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 \$751,000. (E1). The Adams County Board of Equalization ("the Board") granted the protest. (E1).

The Assessor appealed the Board's decision on August 23, 2004 pursuant to Neb. Rev. Stat. §77-5007 (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §8) and §77-5007.01 (Reissue 2003). The Commission served a Notice in Lieu of Summons on the Board and on the Company, and each filed an Answer. The Commission issued an Order for Hearing and Notice of Hearing, and served copies on each Party.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on July 7, 2005. The Assessor appeared personally at the

hearing, and with counsel, Michael O. Mead, Esq.. The Board appeared through Charles A. Hamilton, the Deputy Adams County Attorney. The Company appeared through one of its Managers, William D. Langford, and through counsel, Richard C. Witt, Esq.. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

III. APPLICABLE LAW

The Assessor 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 Assessor, 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 acquired the subject property in 2003 for \$751,000. (E28:1).
2. The subject property was vacant as of the assessment date, and had been vacant for an unknown amount of time prior to that date.
3. The subject property, at the time of purchase, had groundwater which was contaminated with Volatile Organic Compounds (VOP) from a degreaser pit which formed part of the automotive parts manufacturing operation which was originally conducted on the subject property. (E30:156).

**V.
ANALYSIS**

The Company purchased the subject property on December 18, 2003 from Dana Corporation for \$751,000. (E28:1). The subject property was offered for sale to at least one other individual. The sale was subject to an easement agreement, which allowed Dana Corporation to access the property for purposes of remediation of groundwater contamination. Dana Corporation is required to bear all remediation costs.

The Assessor alleges that price paid did not represent a full transfer of rights to the property in light of the temporary

easement agreement and since the groundwater processing building and the monitoring and extraction wells were severed from the real estate. (E29). The Assessor did not quantify the impact of the easement on the subject property's actual or fair market value.

The Assessor's Appraiser also alleges that under the Cost Approach the subject property's actual or fair market value was \$1,300,000. The Assessor, however, did not make a Cost Approach Worksheet supporting that value a part of the record. The Assessor's Appraiser testified that the Replacement Cost New was reduced by 83% for physical depreciation and then reduced by 51% for functional depreciation under the Court's finding in *Garvey Elevator*. The Assessor's Appraiser testified that he did not attribute any external obsolescence to the subject property.

The uncontroverted evidence establishes that the some of the subject property cannot be used due to the presence of the degreaser pit and approximately 16 monitoring wells, some of which are located inside the building. The Assessor's Appraiser admitted that the Board in reaching its opinion of value may have attributed higher or lower physical depreciation, and may have attributed functional or external obsolescence.

The Assessor's evidence does not establish that the Board's decision was incorrect and either unreasonable or arbitrary.

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 Assessor 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 Board, and the Company, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the Assessor 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).
6. The Assessor has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Company's Motion to Dismiss must accordingly be granted.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Company's Motion to Dismiss is granted.
2. The Company's real property legally described as Lot 7, Block 3, Hastings Industrial Park West, City of Hastings, Adams County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$101,800
Improvements	\$649,200
Total	\$751,000

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 Reynolds made and entered the above and foregoing Findings and Orders in this appeal on the 7th day of July, 2005. Commissioner Hans abstained. The Findings and Order were however approved and confirmed by Commissioners Lore 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.