

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

CARDINAL PROPERTIES, LLC,)	
)	
Appellant,)	CASE NO. 04C-58
)	
vs.)	
)	FINDINGS AND FINAL ORDER
DAKOTA COUNTY BOARD OF)	DISMISSING APPEAL AT THE
EQUALIZATION,)	CLOSE OF THE TAXPAYER'S
)	CASE IN CHIEF
Appellee.)	

SUMMARY OF DECISION

Cardinal Properties, LLC, appeals the Dakota County Board of Equalization's order denying the Taxpayer's 2004 valuation protest. The Commission afforded each of the Parties the opportunity to present evidence and argument. The Board moved to dismiss the Taxpayer's appeal 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 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

The Taxpayer owns a 11,250 square foot tract of land legally described as Lot 7 and the W½ of Lot 8, Block 235, Dakota City,

Dakota County, Nebraska. (E3:2). The tract of land is improved with a modular structure over a crawl space used as a commercial office. The duplex has 1,848 square feet of above-grade finished area built in 1999, two attached garages, and a wood deck.

(E3:2).

The State Assessing Official for Dakota County determined that the subject property's actual or fair market value was \$123,655 as of the January 1, 2004, assessment date. (E3:1). The Taxpayer timely protested that determination and alleged that the subject property's January 16, 2004, purchase price of \$84,000 constituted actual or fair market value. (E1). The Dakota County Board of Equalization ("the Board") granted the protest in part and found that the subject property's actual or fair market value was \$107,460 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 20, 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. 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 Norfolk, Dakota County, Nebraska, on May 25, 2005. The Taxpayer appeared personally at the hearing through Mr. Dan Tramp, a Manager of the Limited Liability

Company. The Board appeared through Edward H. Matney, III, the Dakota County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

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) (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 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 opinion evidence of actual or fair market value.

2. The Taxpayer adduced evidence that it paid \$84,000 for the subject property in January or February 2004.

**V.
ANALYSIS**

The only Taxpayer evidence received is the testimony of its Manager that the LLC acquired the property in January or February, 2004. The Taxpayer adduced no opinion evidence of actual or fair market value.

The Taxpayer did adduce evidence that it paid \$84,000 for the subject property. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value." *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2D 631, 637, (1998).

The Board moved to dismiss the appeal at the close of the Taxpayer's case. 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).

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

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Dakota County Board of Equalization's Order setting the subject property's 2004 value is therefore final.
3. The Taxpayer's real property legally described as Lot 7 and the W $\frac{1}{2}$ of Lot 8, Block 235, Dakota City, Dakota County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 11,340
Improvements	\$ 96,120
Total	\$107,460

4. Any request for relief by any Party not specifically granted by this Order is denied.
5. This decision, if no appeal is filed, shall be certified to the Dakota County Treasurer and the State Assessing Official for Dakota County pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
6. This decision shall only be applicable to tax year 2004.
7. 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 25th day of May, 2005. Commissioner Hans dissented. The same were 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 26th day of May, 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.

PLEASE NOTE: You will only be notified of a change in assessed value for your property for tax year 2005 if the 2005 assessed value differs from the 2004 assessed value as determined by your Assessor or County Board of Equalization. The Commission's decision has no impact on that determination. You should contact your Assessor's Office after March 19, 2005, to determine your property's assessed value for 2005. If you are unsatisfied with that value, you must file a protest on or after June 1, and before July 1, 2005. If you fail to file a protest, there can be no change to the Assessor's determination of the 2005 assessed value for your property.