

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

MONUMENT MANAGEMENT GROUP,	)	
LLC,	)	
	)	CASE NO. 04C-174
Appellant,	)	
	)	
vs.	)	FINDINGS AND FINAL ORDER
	)	AFFIRMING DECISION OF THE
SCOTTS BLUFF COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Monument Management Group, a Nebraska Limited Liability Company, owns and operates a Holiday Inn Express located in the City of Scottsbluff, Scotts Bluff County, Nebraska. The Company protested the Scotts Bluff County Assessor's proposed 2004 assessed value for the land component of the Company's property to the Scotts Bluff County Board of Equalization. The Board granted the Company's protest only in part. The Company appeals the Board's determination of actual or fair market value of the land component as of January 1, 2004.

**I.  
ISSUES**

The issues before the Commission are (1) whether the Board's decision to grant the Company's land valuation protest only in part was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value for the land component was unreasonable.

**II.**  
**STATEMENT OF THE CASE**

The Company owns a 2-acre tract of land legally described as Lot 11, Block 1, Quindt Commercial Tracts Replat, in the City of Scottsbluff, Scotts Bluff County, Nebraska. (E6:8). The tract of land is improved with a commercial hotel operated under the Holiday Inn Express flag. (E6:12).

The Scotts Bluff County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$2,112,016 as of the January 1, 2004, assessment date and that the land component had an actual or fair market value of \$424,564. (E1). The Company timely protested that determination and alleged that the subject property's land component had an actual or fair market value of \$250,000. (E1). The Board granted the protest in part and found that the subject property's land component had an actual or fair market value of \$300,000 as of the assessment date. (E1).

The Company appealed the Board's decision on August 24, 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 each document 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 August 31, 2005. The Company appeared at the

hearing through Roger L. Frank, the Company's Managing Member. The Board appeared through Benjamin M. Shaver, Esq., the Scotts Bluff County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Hans was excused from the proceedings. 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 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 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 acquired two tracts of land which included the subject property in 1995 for \$155,000 each. In 1998 the Company sold one of the tracts for \$450,000.
2. The subject property's 2004 land value, \$300,000, is significantly less than the price paid for comparable property in 1998.

**V.  
ANALYSIS**

The Company acquired two adjoining lots in 1995 for \$155,000 each. The lots are at the eastern end of the City of Scottsbluff, on U.S. Highway 26. In 1995 or 1996, the State acquired part of the subject property for development as a frontage road. The frontage road now services the subject property, a Staples Office Supply Store, a Target store, a restaurant, and a modular home sales company. The Company's Managing Member does not recall the price paid by the State. In 1998, the Company sold the second lot for development as the Staples Office Supply Store for \$450,000.

The Company's Managing Member testified that in his opinion the subject property's land component's actual or fair market was \$187,500 as of the assessment date. An owner who is familiar

with his or her property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). Evidence amounting to a difference of opinion, however, does not meet the Taxpayers' burden of proof. *US Ecology, supra.*

The Company's Managing Member offered evidence of the price paid for one parcel of unimproved land approximately six blocks from the subject property. (E6:39). This property is off of Highway 26 and is accessed by 14<sup>th</sup> Avenue. (E6:39). The Company failed to provide the Property Record File for this property, but offered testimony that the parcel is approximately 1.89 acres in size. The Company acquired this parcel on June 11, 2004, six months after the assessment date, in a Federal Internal Revenue Service Code §1031 exchange, for \$150,000. The subject property's actual or fair market value may be established using prices paid for "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 prices paid for 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 failed to offer sufficient clear and convincing evidence that the price paid for this one "comparable" establishes the actual or fair market value of the subject property as of the assessment date.

The Company also offered evidence that another parcel of land had an increase in assessed value over 2003, but not to the extent of the subject property's land value increase. (E2). The Company failed to offer the Property Record File for this property, and there is no evidence that this property was sold. (E2). 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 Company's evidence consists of opinion testimony; one transaction which occurred six months after the assessment date; and reference to the assessed value of some otherwise unidentified parcel. This evidence does not rise to the level of clear and convincing evidence that the Board's decision concerning the value of the subject property's land component was incorrect and either unreasonable or arbitrary.

The Company alleges that using, for example, the Cost Approach, the land value and the improvement value are determined separately. The valuation of individual components is important for a determination of value using the Cost Approach, however, the resulting value from a combination of constituent components has to be reconciled with the actual or fair market value of comparable properties because it is the total value of the property that is assessed, not the individual components. See, e.g., *Bumgarner v. Valley County*, 208 Neb. 361, 366 - 367, 303 N.W.2d 307,311 (1981). The Company has offered evidence of the land component value for the subject property but failed to reconcile the combined component values with actual or fair market value of comparable improved properties.

The Board's decision 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, 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 clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Scotts Bluff County Board of Equalization's Order setting the subject property's 2004 assessed value is affirmed.
2. The Company's real property legally described as Lot 11, Block 1, Quindt Commercial Tracts Replat, in the City of Scottsbluff, Scotts Bluff County, Nebraska, more commonly known as the Holiday Inn Express, shall be valued as follows for tax year 2004:

Land	\$ 300,000
Improvements	\$1,687,452
Total	\$1,987,452
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 30<sup>th</sup> day of August, 2005. 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 31<sup>st</sup> day of August, 2005.

**SEAL**

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*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.