

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

WESTCHESTER CAPITAL, LLC,)	
)	
Appellant,)	CASE NO. 03C-4
)	03C-5
vs.)	03C-6
)	
SARPY COUNTY BOARD OF)	FINDINGS AND
EQUALIZATION,)	FINAL ORDER
)	
Appellee.)	

Appearances:

For the Appellant: Paul J. Gardner, Esq.
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For the Appellee: Tamra L. W. Madsen, Esq.
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Before: Commissioners Hans, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Westchester Capital, LLC ("the Taxpayer") owns three unimproved tracts of land legally in Sarpy County, Nebraska. (E6; E4; E5). The Taxpayer acquired all three tracts on July 31, 2001, for \$1,938,326. (E7).

The subject property in Case Number 03C-4 is a 23.03 acre tract of legally described as Lot 4, Papio Valley 2 Business Park, Sarpy County, Nebraska. (E6:1; E21). The Sarpy County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$1,504,722 as of

the January 1, 2003, assessment date. (E6:1). The Taxpayer timely filed a protest of that determination and requested an equalized value of \$482,916. (E1:2). The Sarpy County Board of Equalization ("the Board") denied the protest. (E1:2). The Taxpayer filed an appeal of the Board's decision on August 5, 2003.

The subject property in Case Number 03C-5 is a 3.25 acre tract of legally described as Lot 2, Papio Valley 2 Business Park, Sarpy County, Nebraska. (E4:1; E21). The Assessor determined that the actual or fair market value of the Taxpayer's real property was \$247,452 as of the assessment date. (E4:1). The Taxpayer timely filed a protest of that determination and requested an equalized value of \$68,149. (E2:2). The Board denied the protest. (E2:2). The Taxpayer filed an appeal of the Board's decision on August 5, 2003.

The subject property in Case Number 03C-6 is a 3.92 acre tract of legally described as Lot 3, Papio Valley 2 Business Park, Sarpy County, Nebraska. (E5:1; E21). The Assessor determined that the actual or fair market value of the Taxpayer's real property was \$384,491 as of the assessment date. (E5:1). The Taxpayer timely filed a protest of that determination and requested an equalized value of \$82,101. (E3:2). The Board denied the protest. (E3:2). The Taxpayer filed an appeal of the Board's decision on August 5, 2003.

The Commission served a Notice in Lieu of Summons on the Board on August 11, 2003, which the Board answered on August 20, 2003. The Commission consolidated each of the three appeals for purposes of hearing and issued a consolidated Order for Hearing and Notice of Hearing to each of the Parties on January 7, 2004. 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 Lincoln, Lancaster County, Nebraska, on March 15, 2004. The Taxpayer appeared at the hearing through John M. Glazer, a Manager and Member of the Limited Liability Company. The Taxpayer also appeared through Paul J. Gardner, Esq. The Board appeared through Tamra L. W. Madsen, Esq., Deputy Sarpy County Attorney. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Commission afforded each of the Parties to present evidence and argument. The Board moved to dismiss the appeal for failure to prove a *prima facie* case.

II.
ISSUES

The issues before the Commission are (1) whether the Board's decisions were incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's values were reasonable. The only issue before the Commission is whether the subject properties' assessed values are equalized with comparable property.

III.
APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decisions were incorrect and (2) that the Board's decisions were unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7)(Reissue 2003)). 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 values were 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 acquired the subject properties in 2001 for \$1,938,326. (E7). The Taxpayer also paid Special Assessments totaling \$474,507.56 on February 28, 2003. (E8:1). The Taxpayer's investment in the subject property is \$2,412,833.56.
2. The Taxpayer's requested value for the three parcels is \$633,166. (E1:2; E2:2; E3:2). Using the 2001 purchase price, the Taxpayer's requested level of assessment is 26.24%.
3. The Taxpayer adduced no opinion of actual or fair market value.
4. The Taxpayer adduced no evidence of the actual or fair market value of any comparable properties, or the level of assessment for the comparable properties.
5. The Taxpayer failed to adduce any evidence supporting its request for a 73.76% reduction in the assessed values of the subject properties for tax year 2003.

**V.
ANALYSIS**

The Taxpayer acquired three tracts of land in 2001 for \$1,938,326. (E7). The Taxpayer's Manager, a Certified Public

Accountant with no training or experience in real estate development, testified that the Taxpayer intends to develop the tracts into one or more commercial developments.

The Taxpayer alleges that for tax year 2003, the Assessor utilized a "developer's discount" to value comparable commercial property. The Taxpayer further alleges that since it did not receive a "developer's discount," the subject properties' assessed values were not equalized with comparable real property.

The Taxpayer adduced no evidence of the existence of or the methodology used, if any, to derive the "developer's discount." The Taxpayer adduced no evidence of actual or fair market value of the subject properties or of any comparable properties. The Taxpayer adduced no evidence of the level of assessment of subject properties using the actual or fair market value of the subject properties as of the January 1, 2003, assessment date.

The evidence does establish that the Taxpayer satisfied outstanding Special Assessments which totaled \$474,507.56 in February, 2003. (E8:1). The Taxpayer's total investment in acquiring the subject property was \$2,412,833.56. (E8:1). The Taxpayer's requested value, \$633,166, divided by the acquisition cost (\$2,412,833.56), yields a requested level of assessment of 26.24%. The Taxpayer adduced no evidence that the "developer's discount," if any, amounts to a 73.76% reduction of actual or fair market value.

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 unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998).

The Commission, in the absence of any evidence of value, and in the absence of any evidence of a lack of equalization, must affirm the Board's decisions to deny the Taxpayer's protests.

**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 the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
3. The Board is presumed to have faithfully performed its official duties in determining the actual or fair market value of the property. The Board is also presumed to have acted upon sufficient competent evidence to justify its decision. 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. An owner who is familiar with his property and knows its worth is permitted to testify to its value. *U. S. Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
6. An owner may testify to the worth of his or her property if the owner is familiar with the property and knows the worth. A corporate officer or president is not, as such, qualified to testify as to value of corporate property. In order to qualify, he or she must be shown to be familiar with the property and have a knowledge of values generally in the vicinity. *Kohl's Dept. Stores v. Douglas County Bd. of*

Equal., 10 Neb.App. 809, 813 - 814, 638 N.W.2d 877, 881 (2002).

7. 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).
8. 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).
9. The Board, based upon 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 unreasonable or arbitrary. *Bottorf v. Clay County Bd. of*

Equalization, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566
(1998).

10. 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 Sarpy County Board of Equalization's Orders setting the assessed values of the subject properties for tax year 2003 are affirmed.
3. The Taxpayer's real property in Case Number 03C-4, legally described as Lot 4, Papio Valley 2 Business Park, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$1,504,733
Improvements	\$ -0-
Total	\$1,504,733

4. The Taxpayer's real property in Case Number 03C-5, legally described as Lot 2, Papio Valley 2 Business Park, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$247,452
Improvements	\$ -0-
Total	\$247,452

5. The Taxpayer's real property in Case Number 03C-6, legally described as Lot 3, Papio Valley 2 Business Park, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$384,491
Improvements	\$ -0-
Total	\$384,491

6. Any request for relief by any Party not specifically granted by this order is denied.
7. This decision, if no appeal is filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003).
8. This decision shall only be applicable to tax year 2003.
9. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 15th day of March, 2004. 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) (Reissue 2003).

Signed and sealed this 15th day of March, 2004.

SEAL

Wm. R. Wickersham, Chair