

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

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| METRO CLASSIC STORAGE, INC., |) | |
| |) | |
| Appellant, |) | CASE NO. 03C-173 |
| |) | |
| vs. |) | |
| |) | |
| SARPY COUNTY BOARD OF |) | FINDINGS AND |
| EQUALIZATION, |) | FINAL ORDER |
| |) | |
| Appellee. |) | |

Appearances:

For the Appellant: Mark A. Fahleson, Esq.
Attorney at Law
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Lincoln, NE 68508

For the Appellee: Tamra L. W. Madsen, Esq.
Deputy Sarpy County Attorney
1210 Golden Gate Drive
Papillion, NE 68046

Before: Commissioners Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Norman D. Riffel and his wife purchased certain real property in Sarpy County, Nebraska for \$155,074 on August 6, 1998. (E8:1). Mr. Riffel then sold the property to Metro Classic Storage, Inc., ("the Corporation" or "the Taxpayer") on September 10, 1999, for \$50,663. (E8:1). Mr. Riffel is the President of the Corporation and has a 60% ownership interest in the Corporation.

The real property at issue is a 1.78-acre tract of land legally described as Lot 5, Lakeview South No. 5, Sarpy County,

Nebraska ("the subject property"). (E8:1). The Taxpayer erected two "open faced pole buildings," on the subject property which were enclosed on three sides at a cost of less than \$50,000. These improvements were first valued by the Assessor in 2000. (E8:1). One building is 324 feet by 40 feet, and the second building is 312 feet by 40 feet. (E8:5). The Taxpayer enclosed the open south side of the second building during 2002. (E8:5). Building One is used to store mobile homes, recreational vehicles, campers and other recreational vehicles. Building Two was used for tire storage. The Taxpayer also made certain improvements to the land component of the subject property to remediate a drainage problem. These improvements cost \$55,070. (E1:2; E5:1).

The Sarpy County Assessor ("the Assessor") determined that the actual or fair market value of the Taxpayer's real property was \$213,427 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the actual or fair market value of the property was \$135,890. (E1:2). The Sarpy County Board of Equalization ("the Board") denied the protest. (E1:1).

The Taxpayer filed an appeal of the Board's decision on August 22, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 30, 2003, which the Board answered on September 12, 2003. The Commission issued an Order

for Hearing and Notice of Hearing to each of the Parties on May 25, 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 July 9, 2004. The Taxpayer appeared at the hearing through Norman D. Riffel, the Corporation's President. The Corporation also appeared through counsel, Mark A. Fahleson, Esq.. The Board appeared through Tamra L. W. Madsen, Deputy Sarpy County Attorney. Commissioners Lore, Reynolds and Wickersham heard the appeal. Commissioner Hans was excused from the proceedings. Commissioner Wickersham served as the presiding officer. The Commission afforded each of the Parties the opportunity to present evidence, to present argument, and to cross-examine witnesses for the opposing Party. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief. The Commission denied the Motion, and the Board rested without adducing any evidence.

II. 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.

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)(Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). 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's President's opinion of actual or fair market value was \$135,890 or \$150,000 as of the assessment date.

2. The Taxpayer adduced some evidence which could be used to reach an indication of value under the Income Capitalization Approach. This evidence is commingled with information for another enterprise not directly to the business conducted on the subject property.

**V.
ANALYSIS**

The Taxpayer adduced opinion evidence of actual or fair market value of the subject property only from the Taxpayer's President. The Taxpayer's President first testified that the subject property's actual or fair market value was \$135,890 as of the assessment date. (E1:2). This opinion was based on the 2002 assessed value of the land component (\$135,890) (E8:1), and the 2003 assessed value of the improvement component (\$200). (E8:1). The prior year's assessment is not relevant to the subsequent year's valuation. *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).

The Taxpayer's President later testified that his opinion of actual or fair market value was \$150,000 as of the assessment date. The Taxpayer's President's testimony concerning actual or fair market value of the subject property as of the assessment date is inconsistent. The Taxpayer's opinions of actual or fair market value was not supported by any evidence of comparable

sales. This evidence of value amounts to a difference of opinion. Such evidence fails to satisfy the burden of proof unless clear and convincing evidence is adduced establishing that the value placed on the subject property, when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, not mere errors of judgment. *US Ecology, Inc. v. Boyd County Bd of Equalization*, 256 Neb. 7, 15, 588 N.W.2d 575, 581 (1999). No such evidence was provided.

The Taxpayer did adduce some evidence which might be used to reach an indication of value using the Income Capitalization Approach. This approach has seven steps: (1) Estimate potential gross income from market data; (2) Estimate vacancy and collection loss and subtract it from gross income; (3) Add miscellaneous income to arrive at effective gross income; (4) Analyze and estimate operating expenses; (5) Subtract operating expenses from effective gross income to arrive at net operating income; (6) Select an appropriate capitalization method, technique, and rate; and (7) Compute value by capitalizing the net operating income. *Property Assessment Valuation*, 2nd Ed., International Association of Assessing Officers, 1996, p. 46

The Taxpayer failed to adduce any evidence of the market factors necessary to reach an indication of value under this approach. Furthermore what evidence the Taxpayer did adduce was commingled

with income and expense data from another enterprise conducted by the Taxpayer. An indication of actual or fair market value cannot be reached under this approach without evidence of typical or market income, typical or market expenses, and a typical or market capitalization rate.

The Taxpayer objected, and then withdrew its objection to the Commission's receipt of the Board's Exhibits 8 and 9. Exhibit 8, page 2 and Exhibit 9 purport to establish a different value for the subject property. However, nothing in these exhibits establish that the revised opinions of value were effective as of January 1, 2003. Exhibit 8, page 2 is in fact dated 2004. Exhibit 9 is undated, but based on testimony of the Board's Appraiser, was prepared in 2004.

The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect, unreasonable, or arbitrary, or that the Board's value was unreasonable. 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) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

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. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's determination of value was unreasonable.
7. The Board's decision must be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Sarpy County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is affirmed.
2. The Taxpayer's real property legally described as Lot 5, Lakeview South No. 5, Sarpy County, Nebraska, shall be valued as follows for tax year 2003:

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|--------------|-----------|
| Land | \$213,227 |
| Improvements | \$ 200 |
| Total | \$213,427 |
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 Sarpy County Treasurer, and the Sarpy County Assessor,

pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).

5. This decision shall only be applicable to tax year 2003.
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 9th day of July, 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 9th day of July, 2004.

SEAL

Wm. R. Wickersham, Chair