

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

DENNIS L. MILLER,	)	
Appellant,	)	CASE NO. 04C-40
vs.	)	
CASS COUNTY BOARD OF	)	FINDINGS AND FINAL ORDER
EQUALIZATION,	)	DENYING RELIEF
Appellee.	)	

Appearances:

For the Appellant: Dennis L. Miller  
8720 Riverdale Road  
Beaver Lake, NE 68048

For the Appellee: Nathan B. Cox, Esq.  
Cass County Attorney  
346 Main Street  
Plattsmouth, NE 68048-1964

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.  
STATEMENT OF THE CASE**

Dennis L. Miller and Martha Miller own a .23-acre tract of land legally described as Outlots SL8 of 2 EXC HWY in the SE-4SEI-4 of Section 15, Township 11, Range 13, Village of Murray, Cass County, Nebraska. (E13:1). The tract of land is improved with a building built in approximately 1984 formerly used as a commercial car wash ("the subject property"). (E14:4).

Dennis L. Miller ("the Taxpayer") timely protested the 2004 proposed value of \$19,232 for the subject property. (E12:1). The Cass County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 17, 2004. The Commission served a Notice in Lieu of Summons on the Board on August 18, 2004, which the Board answered on August 26, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on November 8, 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 January 20, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Nathan B. Cox, the Cass County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Commission afforded each of the Parties the opportunity to present evidence and argument. The Taxpayer testified then rested. The Board rested without adducing any testimony.

## **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. X77-5016(7) (Cum. Supp. 2004)). 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 opinion of actual or fair market value was \$15,000 as of the assessment date.
2. The properties offered as "comparables" by the Taxpayer are not comparable to the subject property.
3. The Taxpayer adduced no other evidence of sales of comparable properties, or information from which an

indication of value could be derived from the Income or Cost Approaches.

**V.  
ANALYSIS**

The Taxpayer testified that he would sell the subject property for \$15,000. The Taxpayer provided four exhibits concerning properties which he contends are "comparable" to the subject property and support his opinion of value. (E5 - E8). "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation, 2nd Ed., International Association of Assessing Officers, 1996, p. 98.* When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Property Assessment Valuation, 2nd Ed., 1996, p.103.* Most adjustments are for physical characteristics. *Property Assessment Valuation, 2nd Ed., 1996, p.105.*

The first page of Exhibit 5 and Exhibit 6 consist of hand written notes. Attached to each of these pages is the front cover of the Property Record File for the properties. The Taxpayer did not include the contents of the Property Record File for these properties as part of his evidence. The Taxpayer testified that the property which is the subject of Exhibit 5 is a building used as a repair facility for boats. The Taxpayer

testified that the structure is of concrete block construction similar to the subject property, but that an apartment was added to the structure in the past 10-years. The 2004 assessed value of this property is \$46,188. (E5:2). The improvement component of this property is assessed at \$37,791. (E5:2). There is no evidence as to how that improvement's assessed value is allocated between the concrete building and the apartment. The Taxpayer's handwriting on Exhibit 5, page 1, indicates that the improvements total 3,892 square feet. The Taxpayer testified that his building is approximately 1,200 square feet in size. The record indicates the subject property's building improvements are approximately 1,250 square feet in size. (E14:7).

Exhibit 6 concerns a house and a large brick garage on a lot in the Town of Murray. The assessed value of the building improvements is listed as \$64,765. (E6:2). The Taxpayer testified that \$20,523 of this amount represents the assessed value of the brick garage. His handwritten notes indicate that this garage is approximately 4,313 square feet in size. This building differs from the subject property in that it is of all brick construction, has three garage doors, two stories, has higher ceiling heights and is significantly larger than the subject property.

Exhibit 7 is a two-page "Improved Market Sales Analysis" for a sale dated August 3, 2004. The property is located in

Plattsmouth, the county seat of Cass County. The property consists of a building with two bays formerly used as a commercial self-service car wash operation. The property sold for \$15,000. No car wash equipment was present on the property. The Analysis indicates that the price paid per square foot was \$12.35. However, this building is approximately 14-years older than the subject property and is located in the City of Plattsmouth. This structure is divided into two drive-through bays. The Taxpayer's building is divided into an area formerly used as an office, a machinery or equipment room, and an enclosed garage bay.

Exhibit 8 is a one-page "Improved Market Sales Analysis" for a sale which occurred on November 15, 2002. The Taxpayer testified from the Exhibit that the property is located in Plattsmouth. The building on this property were built in 2000 and is used as a service garage.

When comparing assessed values of other properties with the subject property to determine actual value the properties must be truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb.App. 688, 697, 584 N.W.2d 837, 843 (1998). The Taxpayer failed to adduce any evidence of the adjustments necessary to render his offered properties truly comparable to the subject property. There is no other evidence in the record to support the Taxpayer's opinion of value.

The burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his 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, and 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).

**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).
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 failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
6. The Board's decision must accordingly be affirmed.

**VII.  
ORDER**

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

1. The Cass County Board of Equalization's Order setting the assessed value of the subject property for tax year 2004 is affirmed.

2. The Taxpayer's real property legally described as Outlots SL8 of 2 EXC HWY in the SE<sup>1</sup>--4SE<sup>1</sup>-4 of Section 15, Township 11, Range 13, Village of Murray, Cass County, Nebraska, shall be valued as follows for tax year 2004:

Land	\$ 6,058
Improvements	\$13,174
Total	\$19,232

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 Cass County Treasurer, and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004).
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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 20t' day of January, 2005. The same were approved and confirmed by Commissioners Lore, 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).

Signed and sealed this 20<sup>th</sup> day of January, 2005.

SEAL



Wm. R. Wickersham  
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). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.

