

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

ROBERT J. STRANG,)	
)	
Appellant,)	CASE NO. 04C-255
)	
vs.)	
)	FINDINGS AND FINAL ORDER
MERRICK COUNTY BOARD OF)	DISMISSING APPEAL AT THE CLOSE
EQUALIZATION,)	OF THE TAXPAYER'S
)	CASE-IN-CHIEF
Appellee.)	

SUMMARY OF DECISION

Robert J. Strang ("the Taxpayer") owns certain commercial real property located in Merrick County, Nebraska. The Taxpayer protested the Merrick County Assessor's ("the Assessor's") proposed 2004 value to the Merrick County Board of Equalization ("the Board"). The Board denied the Taxpayer's protest, and the Taxpayer appealed. The Board moved to dismiss the appeal at the close of the Taxpayer's case-in-chief for failure to prove a prima facie case.

**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 tract of land legally described as Lot 1, Goodwater Subdivision, in Section 7, Township 12, Range 7, in the City of Chapman, Merrick County, Nebraska. The tract of land is improved with commercial building with 1,404 square feet of gross building area built by the Taxpayer between 1989 and 1991. The Assessor determined that the subject property's actual or fair market value was \$25,500 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that the subject property's actual or fair market value was \$8,425. (E1). The Board denied the protest. (E1). The Taxpayer appealed the Board's decision on August 25, 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 Lincoln, Lancaster County, Nebraska, on November 2, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Steven M. Curry, the Merrick County Attorney. Commissioners Hans, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer. Commissioner Lore was excused from the proceedings.

The Board moved to dismiss the appeal at the Taxpayer's case-in-chief for failure to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

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 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 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 is a resident of Iowa and is not aware of commercial property values within the City of Chapman, Merrick County, Nebraska.
2. The Taxpayer's only basis for his opinion of value is the prior year's assessed value.

**V.
ANALYSIS**

The Taxpayer's only evidence of actual or fair market value is opinion testimony based on the prior year's assessment. 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).

An owner who is familiar with his 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). An owner's opinion of value, standing alone however, does not overcome the statutory presumption. *US Ecology, supra*.

There is no evidence that the Board's decision was incorrect and either unreasonable or arbitrary. Based upon the applicable law, the Board 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 Board's Motion to Dismiss must accordingly be granted.

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).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board's Motion to Dismiss is granted.
2. The Taxpayer's commercial real property legally described as Lot 1, Goodwater Subdivision, in Section 7, Township 12, Range 7, City of Chapman, Merrick County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

Land	\$ 3,720
Improvements	\$21,780
Total	\$25,500

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 Merrick County Treasurer, and the Merrick 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 2nd day of November, 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 3rd day of November, 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.