

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

HASTINGS LODGING, INC.)	
)	
Appellant,)	CASE NO. 03C-285
)	
vs.)	
)	FINDINGS AND FINAL ORDER
ADAMS COUNTY BOARD OF)	AFFIRMING DECISION OF BOARD
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Glen T. Parks, Esq.
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For the Appellee: Charles A. Hamilton, Esq.
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Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

Hastings Lodging, Inc. ("the Taxpayer") owns a tract of land legally described as Lots 1 and 2, Block 2, Assembly of God 2nd Subdivision, Adams County, Nebraska. (E6:1). The tract of land is improved with a 2-story hotel with 19,734 square feet of above grade improvements built in 1997. (E13:1). The hotel is operated as the Days Inn Hotel of Hastings, Nebraska. (E6:1).

The Adams County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$1,113,000 as of the January 1, 2003, assessment date. (E6:1). The

Taxpayer timely filed a protest of that determination and alleged that the subject property's actual or fair market value of the property was \$650,000. (E1). The Adams County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 25, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 25, 2003, which the Board answered on September 30, 2003. The Commission issued an Amended Order for Hearing and Notice of Hearing to each of the Parties on July 13, 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 October 18, 2004. The Taxpayer appeared at the hearing through Krishnakant K. Trivedi, the Corporation's President. The Corporation also appeared through counsel, Glen Parks, Esq. The Board appeared through Charles Hamilton, Deputy Adams County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

**II.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization 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 2004 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 testified that in his opinion the subject property's actual or fair market value was 2.5 times the Gross Income as shown on Exhibit 3, page 1, or approximately \$688,810 as of the assessment date.
2. The Taxpayer alleged in its protest that the subject property's assessed value was not equalized with comparable property.
3. The Taxpayer adduced no other evidence of actual or equalized value.
4. The Form 422 contains factual and clerical errors. The Commission therefore relies on the values set forth on the Property Record Card, the Assessor and Board determined values, to wit: Land Value \$136,485; Improvement Value \$976,515, for a Total Assessed Value of \$1,113,000. (E6:1).

**V.
ANALYSIS**

Hotels are generally classified based on the type of lodging. Types of lodging include the following: all-suite hotels; budget motels; convention hotels; extended-stay hotels; full-service hotels; hostels; luxury hotels; microtels; mixed-use hotels; and resort hotels. *The Dictionary of Real Estate*

Appraisal, 4th Ed., Appraisal Institute, 2002, p. 139. The Taxpayer considers the subject property to be a budget motel. The Taxpayer offered testimony that the valuation of budget motels should be based on 2.5 times the Gross Income ("the Gross Income Multiplier or "GIM").

Gross Income Multipliers are simply a benchmark relationship used to compare real estate sales. *Income Property Valuation*, Dearborn Financial Publishing, Inc., 1994, p. 135. Gross Income Multipliers for relatively comparable properties may be substantially different depending on differences in financing; ownership interest purchased; existence of excess land; differences in vacancy and credit loss percentages; differences in expense ratios; differences in expected future income; and differences in expected resale (reversion) proceeds. *Supra*, at p. 135. Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes. *The Appraisal of Real Estate, 12th Ed.*, Appraisal Institute, 2001, pp. 546 - 547.

The Taxpayer's President in his testimony was unable to support use of the GIM, taking into account the factors and considerations described above. The Taxpayer's President adduced no evidence other than his opinion that the use of a 2.5 to 2.8 GIM was appropriate to establish actual or fair market value. The Taxpayer adduced no evidence other than the Taxpayer's

President's testimony challenging the Board's methodology. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting valuation methods utilized fails to meet his or her burden of proving that value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

The Taxpayer adduced no evidence supporting his equalization claim. The Taxpayer adduced no evidence of value other than the opinion of evidence offered by the Taxpayer's President. 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 2004 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. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Adams 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 Lots 1 and 2, Block 2, Assembly of God Second Subdivision, Adams County, Nebraska, more commonly known as Days Inn Hastings, shall be valued as follows for tax year 2003:

Land	\$ 136,485
Improvements	\$ 976,515
Total	\$1,113,000
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 Adams County Treasurer, and the Adams County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2004 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 Hans made and entered the above and foregoing Findings and Orders in this appeal on the 18th day of October, 2004. 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) (Reissue 2003).

Signed and sealed this 18th day of October, 2004.

SEAL

Wm. R. Wickersham, Chair