

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

GERING PLAZA PARTNERSHIP,,)	
)	
Appellant,)	CASE NO. 03C-61
)	
vs.)	
)	
SCOTTS BLUFF COUNTY BOARD OF)	FINDINGS AND ORDERS
EQUALIZATION,)	(STIPULATION AT HEARING)
)	
)	
Appellee.)	

Appearances:

For the Appellant: Joe Kirshenbaum
P.O. Box 542010
Omaha, NE 68154-8010

For the Appellee: Ben Shaver, Esq.
Scotts Bluff County Attorney
1725 10th Street
Gering, NE 69341

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

**I.
STATEMENT OF THE CASE**

Gering Plaza Partnership ("the Taxpayer") owns a 4.79-acre tract of land legally described as Blk 1, Midtown Development, Scotts Bluff County, Nebraska. (E9:19). The tract of land is improved with a commercial shopping center built in 1978. (E9:19).

The Scotts Bluff County Assessor ("the Assessor") determined that the subject property's actual or fair market value was \$946,282 as of the January 1, 2003, assessment date. (E1). The Taxpayer timely filed a protest of that determination and alleged that the subject property's actual or fair market value was

\$750,000. (E1). The Scotts Bluff County Board of Equalization ("the Board") denied the protest. (E1).

The Taxpayer filed an appeal of the Board's decision on August 19, 2003. The Commission served a Notice in Lieu of Summons on the Board on September 8, 2003, which the Board answered on September 11, 2003. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on May 28, 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 Scottsbluff, Scotts Bluff County, Nebraska, on September 21, 2004. The Taxpayer appeared at the hearing through Joe Kirshenbaum, one of its Partners. The Board appeared through Ben Shaver, Esq., the Scotts Bluff County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Commission afforded each of the parties the opportunity to present evidence and argument. The Parties, during the course of the hearing, entered into a stipulation regarding the assessed value of the subject property for tax year 2003.

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 Parties, at the hearing on the merits of the appeal, stipulated that the actual or fair market value of the subject property as of the assessment date was \$763,988.
2. The Commission therefore finds and determines that the actual or fair market value of the subject property as of the assessment date was \$763,988.

**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. "Ordinarily, a stipulation entered by the parties to a proceeding or by their attorneys within the scope of authority for representation of the parties, establishes the fact or facts stipulated and binds the parties." *Ehlers v. Perry*, 242 Neb. 208, 218, 494 N.W.2d 325, 333 (1993) (Citations omitted).
6. The Taxpayer has satisfied the burden of persuasion as required by *Garvey Elevators, Inc., supra*.

7. The Board's decision must accordingly be vacated and reversed.
8. The assessed value of the subject property for tax year 2003 as determined by the Board (\$946,282) is not supported by the evidence.
9. The Parties' stipulation constitutes clear and convincing evidence that the action of the Board was unreasonable and arbitrary, and further that the valuation decision of the Board was unreasonable.
10. The Board's decision must be vacated and reversed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Scotts Bluff County Board of Equalization's Order setting the assessed value of the subject property for tax year 2003 is vacated and reversed.
2. The Taxpayer's real property legally described as Block 1, Midtown Development, in the City of Gering, Scotts Bluff County, Nebraska, shall be valued as follows for tax year 2003:

Land	\$156,640
Improvements	\$607,348
Total	\$763,988

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 Scotts Bluff County Treasurer, and the Scotts Bluff 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.

Dated this 22nd day of September, 2004.

Robert L. Hans, Commissioner

Susan S. Lore, Commissioner

Mark P. Reynolds, Vice-Chair

Seal

Wm. R. Wickersham, Chair