

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

BEL FURY INVESTMENTS GROUP LLC, )	)	
	)	
Appellant,	)	Case No 05R-270
	)	
v.	)	DECISION AND ORDER AFFIRMING
	)	THE DECISION OF THE SARPY
SARPY COUNTY BOARD OF	)	COUNTY BOARD OF EQUALIZATION
EQUALIZATION,	)	
	)	
Appellee.	)	

**I.  
STATEMENT OF FACTS**

The above-captioned case was called for a hearing on the merits of an appeal by Bel Fury Investments Group LLC to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the 6th Floor Hearing Room, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska on November 6, 2006, pursuant to a Notice and Order for Hearing issued August 7, 2006. Commissioners Wickersham, Warnes, Lore, and Hans were present. Commissioner Warnes presided at the hearing.

Scott W. Bloemer, Managing Member, was present at the hearing on behalf of Bel Fury Investments Group LLC ("Appellant") without legal counsel.

The Sarpy County Board of Equalization ("County Board") appeared through legal counsel, Brett S. Charles, a Deputy County Attorney for Sarpy County, Nebraska.

The Commission took statutory notice, received exhibits and heard testimony.

The Commission is required by Neb. Rev. Stat. §77-5018 (Supp. 2005) to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. The final decision and order of the Commission in this case is as follows.

**II.  
STATEMENT OF ISSUES**

The Taxpayer appeals taxable value as determined by the Sarpy County Board of Equalization for the subject property. In other words, the Taxpayer alleges that the taxable value of said property exceeded its actual value.

The issues to be decided are (1) Has the Taxpayer provided proof that the taxable value placed upon his property by the Sarpy County Board of equalization was incorrect and arbitrary or unreasonable, thus overcoming the burden of proof imposed by statute? (2) Has the Taxpayer shown the actual or fair market value of subject property after making a showing that the County Board was incorrect, arbitrary or unreasonable?

**III.  
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer is the owner of record of certain real property described as , WEST 10' OF LOT 7 & ALL OF LOT 8, BLOCK 1, BROWN'S SUBDIVISION, Sarpy County, Nebraska, ("subject property").
2. Taxable value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Sarpy County Assessor, value as proposed by the Taxpayer in a timely protest, and taxable value as determined by the County Board is shown in the following table:

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Description: WEST 10' OF LOT 7 & ALL OF LOT 8, BLOCK 1, BROWN'S SUBDIVISION, Sarpy County, Nebraska, Sarpy County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$20,000.00	\$20,000.00	\$20,000.00
Improvement	\$69,281.00	\$50,000.00	\$69,281.00
Total	\$89,281.00	\$70,000.00	\$89,281.00

3. The Taxpayer timely filed an appeal of the County Board's decision to the Commission.
4. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
5. An Order for Hearing and Notice of Hearing issued on August 7, 2006, set a hearing of the Taxpayer's appeal for November 6, 2006, at 1:00 p.m..
6. An Affidavit of Service which appears in the records of the Commission establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Taxable value of the subject property for the tax year 2005 is:

Land value	\$20,000.00
Improvement value	<u>\$69,281.00</u>
Total value	<u>\$89,281.00.</u>

**IV.  
APPLICABLE LAW**

1. "Actual value is 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 a 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. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2003).

2. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Neb. Rev. Stat. §77-112 (Reissue 2003).
3. Use of all of the statutory factors for determination of actual value is not required. All that is required is use of the applicable factors. *First National Bank & Trust of Syracuse v. Otoe Cty.*, 233 Neb. 412, 445 N.W.2d 880 (1989).
4. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2003).
6. All taxable real property, with the exception of qualified agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Cum. Supp. 2004).

7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
8. The presumption that a county board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. *Omaha Country Club v. Douglas County Bd. of Equalization*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
9. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987) (citations omitted)
10. The Commission can grant relief only if the Taxpayer establishes by clear and convincing evidence that the action of the County Board was unreasonable or arbitrary. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
11. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

12. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion.  
*Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).
13. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447, (1999).
14. A corporate officer or other representative of an entity, must be shown to be familiar with the property in question and have a knowledge of values generally in the vicinity to be qualified to offer an opinion of value. *Kohl's Dept. Stores v. Douglas County Bd. of Equal.*, 10 Neb. App. 809, 638 N.W.2d, 881 (2002).

## V. ANALYSIS

The subject property is a single-family residence located at 2506 Edwards Street Bellevue, Nebraska.

The property was purchased by Appellant in 1999 as a "distressed property". The Appellant is a business entity that purchases properties in need of repair at discounted prices. The subject property was purchased by appellant for a sales price approximated to be "in the \$20s". The property was in need of repair due to deferred maintenance.

Appellant's managing member testified that he had been in the business of buying such distressed properties for over 20 years. In that time he had purchased and sold several hundred properties. At any one time his business owned 60 to 70 properties. The intention of his

business was to either wholesale the properties to investors or to fix up the property and sell them for a profit.

The subject property was involved in litigation after purchase and there had not been improvements and rehabilitation to the property prior to January 1, 2005. The property was in need of major repairs as of January 1, 2005. The deficiencies were numerous and included a leaky roof, insulation, bad floors, peeling paint on the interior walls, window repair/replacement, a picture window that was slanted inward and a collapsed exterior shed. The eventual cost to make these repairs was in excess of \$20,000 plus the investment of sweat equity. The Appellant was renting the subject property for \$600 per month up to shortly before January 1, 2005.

The Appellant's managing member testified that the subject property could not be properly assessed for taxable value due to its unique poor condition. In particular, the property did not lend itself to being valued by the cost approach using mass appraisal techniques. The Appellant's managing member believed that the subject property had a taxable value of \$70,000 on January 1, 2005. This belief was in part due to an offer of \$69,000 by a private investor. This offer had been refused because the net proceeds would have been less than \$69,000.

The Appellant did not offer an appraisal for the subject property nor any property record files for comparable sold properties. It is the finding of the Commission that the Taxpayer has not met its burden to show that the Appellee was incorrect in assessing taxable value to the subject property.

The Appellant's failure to provide any proof of quantification of the inadequacies and deficiencies to the subject property is a critical defect to his presentation of taxable value.

The Commission finds the taxpayer did not offer clear and convincing evidence of actual taxable value and the Commission is unable to grant relief.

**VI.  
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. Subject matter jurisdiction of the Commission in this appeal is over all issues raised during the county board of equalization proceedings. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equalization*, 7 Neb.App. 655, 584 N.W.2d 353, (1998).
3. The Commission has jurisdiction over the parties to this appeal.
4. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary, and the decision of the County Board should be affirmed.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. The decision of the County Board determining taxable value of the subject property as of the assessment date, January 1, 2005, is affirmed.
2. Taxable value of the subject property for the tax year 2005 is:

Land value	\$20,000.00
Improvement value	<u>\$69,281.00</u>
Total value	<u>\$89,281.00.</u>



3. This decision, if no appeal is timely filed, shall be certified to the Sarpy County Treasurer, and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Supp. 2005).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2005.
7. This order is effective for purposes of appeal November 17, 2006.

**Signed and Sealed.** November 17, 2006.

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Wm. R. Wickersham, Commissioner

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Susan S. Lore, Commissioner

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Robert L. Hans, Commissioner

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William C. Warnes, Commissioner

**SEAL**

**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 PETITION MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW CONTAINED IN NEB. REV. STAT. §77-5019 (SUPP. 2005). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.**