

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

BEL FURY INVESTMENTS GROUP LLC,)		
)	
Appellant,)		Case No 05R-308
)	
v.)		DECISION AND ORDER AFFIRMING
)	THE DECISION OF THE DOUGLAS
DOUGLAS COUNTY BOARD OF)		COUNTY BOARD OF EQUALIZATION
EQUALIZATION,)		
)	
Appellee.)		

The above-captioned case was called for a hearing on the merits of an appeal by BEL Fury Investments Group LLC ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on December 13, 2007, pursuant to an Order for Hearing and Notice of Hearing issued September 5, 2007. Commissioners Wickersham, Warnes, and Salmon were present. Commissioner Warnes presided at the hearing.

Scott W. Bloemer, as Managing Member of the Taxpayer was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, appeared as legal counsel for the Douglas County Board of Equalization ("the County Board").

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

The Commission is required by Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006) 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.

**I.
ISSUES**

The Taxpayer has asserted that actual value of the subject property as of January 1, 2006, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2006.

**II.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above captioned appeal to maintain the appeal.
2. The parcel of real property described below is the ("subject property").
3. Actual value of the subject property placed on the assessment roll as of January 1, 2005, ("the assessment date") by the Douglas County Assessor, value as proposed in a timely protest, and actual value as determined by the County Board is shown in the following table:

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Description: COUNTRY CLUB DIST LOT 3 BLOCK 22 IRREG S 46 FT , Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 7,200.00	Included in Total	\$ 7,200.00
Improvement	\$126,000.00	Included in Total	\$126,000.00
Total	\$133,200.00	\$ 50,000.00	\$133,200.00

4. An appeal of the County Board's decision was filed with the Commission.
5. The County Board was served with a Notice in Lieu of Summons and duly answered that Notice.
6. An Order for Hearing and Notice of Hearing issued on September 5, 2007, set a hearing of the appeal for December 13, 2007, at 1:00 p.m. CST.
7. 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.
8. Actual value of the subject property as of the assessment date for the tax year 2005 is:

Land value	\$ 7,200.00
Improvement value	<u>\$126,000.00</u>
Total value	<u>\$133,200.00.</u>

III. APPLICABLE LAW

1. Subject matter jurisdiction of the Commission in this appeal is over 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).
2. “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).
3. 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).
4. 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).

5. “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).
6. 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).
7. 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. 2006).
8. 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).
9. 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).
10. 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)

11. The Commission can grant relief only if the action of the County Board was proven to be unreasonable or arbitrary by clear and convincing evidence. See. Neb. Rev. Stat. §77-5016 (7) (Supp. 2005).
12. "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).
13. 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).
14. 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).

IV. ANALYSIS

The Taxpayer is a business entity that has appealed the assessed taxable value of the subject property for the year 2005. The property is a residential lot which has been improved with a residence built in 1936. The residence has 1600 square feet of finished living area and has been rated as average quality.

The Taxpayer's representative testified that the main issues which he believed reduced the actual value of the subject property included the following. First, that there was not a clear

title to the subject property on January 1, 2005. Second, the subject property was in need of repairs which had been deferred due to a decision made not to invest additional monies into the property until the title problems had been corrected. Third, the subject property was located on the corner of a busy street, Blondo. As a result of the above negative factors, the Taxpayer testified that his opinion of value of the subject property on January 1, 2005 was \$50,000. The Taxpayer did not provide any evidence of actual value for the subject property using his own parcels alleged to be of comparable value.

The Commission does not find the problems alleged by the Taxpayer associated with the title to the subject property to be relevant or material to its analysis of the actual value of the subject property on January 1, 2005. The Taxpayer testified that the actual value of the subject property was reduced due to needed repairs which were being deferred due to the inability of obtaining clear title. No evidence was provided itemizing nor quantifying these deficiencies.

The Taxpayer testified that he did not believe the County's parcels alleged to be comparable to the subject property were in fact comparable. Exhibit 2:4.

A Taxpayer who offers no evidence that the subject property was valued in excess of its actual value and who only produced evidence that was aimed at discrediting valuation methods utilized by the County Assessor, fails to meet the burden of proving that valuation placed upon his property was unreasonable or arbitrary. *Beynon v Board of Equalization of Lancaster County*, 213 Neb 488, 329 N.W. 2d 857 (1983).

The Commission denies the appeal of the Taxpayer.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. 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.

**VI.
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. Actual value of the subject property for the tax year 2005 is:

Land value	\$ 7,200.00
Improvement value	<u>\$126,000.00</u>
Total value	<u>\$133,200.00.</u>
3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Cum. Supp. 2006).
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 January 2, 2008

Signed and Sealed. January 2, 2008.

Wm. R. Wickersham, Commissioner

Nancy Salmon, Commissioner

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 (CUM. SUPP. 2006). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.