

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

BEL FURY INVESTMENTS GROUP LLC, )	)	
	)	
Appellant,	)	Case No 05R-313
	)	
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 14, 2007, pursuant to an Order for Hearing and Notice of Hearing issued September 5, 2007. Commissioners Warnes, Salmon, and Hotz 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, 2005, 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, 2005.

**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:

Case No. 05R-313

Description: LANDS SEC - TWN RGE 32 - 15 - 13 E 66 W 132 N 140.5 FT S L 3 T L 14 SW 1/4, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 20,800.00	Included in Total	\$ 20,800.00
Improvement	\$ 94,800.00	Included in Total	\$ 94,800.00
Total	\$115,600.00	\$ 85,000.00	\$115,600.00

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 14, 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	\$ 20,800,00
Improvement value	<u>\$ 94,800,00</u>
Total value	<u>\$115,600.00.</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 unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Cum. Supp. 2006).
12. Proof that the action of the County Board was unreasonable or arbitrary must be by clear and convincing evidence. See, e.g. *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
13. "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).
14. 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).
15. 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**

This appeal is of the assessed taxable valuation of the subject property for 2005. The subject property is an improved residential parcel. The parcel has a split entry residence built in 1967 which is of average quality.

The subject property was purchased at a sheriff's sale on November 3, 1990 for \$47,300 by a company in which the Taxpayer had an interest. The property was then transferred to the Taxpayer at no additional cost on April 1, 2003.

The subject property had been rented to the prior owners, husband and wife tenants, until the husband passed away. The wife continued to rent through January 1, 2005.

The Taxpayer's representative testified that the reason he felt the subject property's actual value was less than that assessed by the County was that the subject property had no improvements since purchase, the property was dated, and there was deferred maintenance. He believes that the condition of the subject property was Fair versus the County's rating of Average. Exhibit 3:1.

The Taxpayer's representative testified that it was his belief that the comparable parcels used by the County, Exhibit 2:4, were not comparable because the square footage shown for them was incorrect and they were in better condition than the subject property. The Taxpayer's representative provided as evidence of this belief the MLS listings for the County's comparable #2, Exhibit 8, and for comparable #3, Exhibit 9. The Commission finds that the testimony by the Taxpayer's representative incorrectly compared the information on Exhibits 8 and 9 to the subject property. This conclusion was drawn by the Commission upon hearing that the Taxpayer's representative added both the finished square footage of the above grade area with the finished basement area for the comparables, Exhibits 8 and 9, but failed to compare it to the same above and below grade finished area of the subject property. The Commission finds that the comparison made by the Taxpayer's representative was without evidentiary value to show inaccuracies in the County's valuation process as shown on Exhibit 2:4. The Taxpayer's

representative testified that he had not been in the County's comparable parcels, but relied on notes of the MLS listings. The Commission finds that there is little weight that it can give to the evidence of the Taxpayer's representative regarding either the alleged inaccuracies of the square footage or condition of the County's comparable parcels.

The Taxpayer did not provide any evidence of sales of comparable parcels to support his opinion of the actual value of the subject property. The Taxpayer's representative stated that he considered the referee's opinion of actual value for the subject property of \$100,000 to be appropriate. Exhibit 5:2. The Taxpayer had requested a valuation of \$85,000 on his protest to the County, Form 422. Exhibit 5:1.

The Taxpayer's representative submitted a list of the cost for home improvements which the Commission finds has little evidentiary value because many of the items shown are not evidenced as needing repair nor is there an itemization of each item shown. Exhibit 7.

The Commission is without sufficient evidence to find that the Taxpayer has met the burden to show by clear and convincing evidence that the decision of the County Board was arbitrary or not reasonable. The appeal of the Taxpayer is denied.

**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	\$ 20,800,00
Improvement value	<u>\$ 94,800,00</u>
Total value	<u><u>\$115,600.00.</u></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.

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Nancy Salmon, Commissioner

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