

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

BEL FURY INVESTMENTS GROUP LLC,)	
)	
Appellant,)	Case No 05R-311
)	
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:

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Description: KOUNTZE 4TH ADD SUPP LOT 13 BLOCK 10 N 27 FT 27 x 138, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$ 3,800.00	Included in Total	\$ 3,800.00
Improvement	\$ 26,200.00	Included in Total	\$ 26,200.00
Total	\$ 30,000.00	\$ 10,000.00	\$ 30,000.00

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 9:00 a.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 \$ 3,800.00

Improvement value \$ 26,200.00

Total value \$ 30,000.00.

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 on the subject property for 2005. The subject property is a residential lot which has been improved with a 1,112 square foot residence built in 1900. The residence is classified as a ranch style of average quality.

The Taxpayer is a business entity which buys distressed properties with the intention of rehabilitating them and then selling or renting them. The subject property was purchased by the Taxpayer as a distressed property on September 18, 2000 for \$33,339. At the time of the purchase the subject property's exterior looked good and no foundational problems were observable. The Taxpayer's representative testified that little or no improvements had been made to the subject property since its purchase. The subject property had been rented to a tenant up through 2002.

The Taxpayer's representative testified that at some time after the purchase at the sale in 2000, certain deficiencies have developed and were in existence on January 1, 2005. These deficiencies were itemized as consisting of foundational problems which included collapsing and buckling walls and floors. Other deficiencies were testified to and evidence regarding the cost to repair each of the deficiencies was provided by the Taxpayer's representative as Exhibit 9. The total repair cost to correct each of the deficiencies was in the amount of \$58,600. The Commission finds that Exhibit 9 includes many items that exceed and go beyond the deficiencies testified to by the Taxpayer's representative and thus is given limited weight or probative value. The Taxpayer's representative testified that the cost of repairs listed in Exhibit 10 were included in Exhibit 9.

The Commission notes from the Referee's report, Exhibit 5:2, that the County had lowered the assessed valuation of the subject property in 2004 to only a partial value due to needed repairs. The Taxpayer's representative confirmed this written statement in the referee's report.

The Taxpayer's representative compared the County's alleged comparable parcels shown on Exhibit 2:4 with MLS listings of two of the comparables, #2 and #3. It was his belief that the comparables used by the County had incorrect information, especially the square footage of finished living space. The Commission notes that the Taxpayer's representative used the total finished square footage for the comparables from the MLS listings, Exhibits 7 and 8, but did not do the same for the subject property. The Commission is aware that to compare the subject property to the alleged comparables used by the County requires consistency in the method of evaluation. The Commission finds from the testimony of the Taxpayer's representative that comparisons were not correctly made. Specifically, the subject property has 1,112 finished square footage of finished residential area above grade and another 984 square feet of finished basement for a total finished square footage of 2,096. The Commission notes that the valuation by the County differs for the units of finished area above grade and that of the area below grade as shown on Exhibit 3:4. Testimony by the Taxpayer's representative consistently added both finished areas of the MLS listing for the County's alleged comparables, but reference was then made to only the finished square footage of the above grade square footage of the subject property. Such comparison is not accurate or revealing.

The Commission is without sufficient evidence to determine if further partial valuation of the subject property is warranted. The Taxpayer has not met its required burden to show that the County Board's decision is arbitrary or unreasonable and the appeal 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 \$ 3,800.00

Improvement value \$ 26,200.00

Total value \$ 30,000.00.

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.

Nancy Salmon, Commissioner

Robert W. Hotz, 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.