

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 13R-317

Decision Affirming
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property is a residential parcel improved with a 962 square foot home located at 1130 Wilroy Road, Omaha, Sarpy County, Nebraska. The Subject Property’s legal description is found in the Case File.
2. The Sarpy County Assessor assessed the Subject Property at \$110,680 for tax year 2013.
3. Bel Fury Investments Group, LLC (herein referred to as the “Taxpayer”) protested this value to the Sarpy County Board of Equalization (herein referred to as the “County Board”) and requested a \$92,469 valuation.
4. The County Board determined that the assessed value of the Subject Property was \$110,680 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on June 4, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, NE, before Commissioner Thomas D. Freimuth.
7. Scott Bloemer, Managing Member of Bel Fury Investments Group, LLC, appeared at the hearing on behalf of the Taxpayer.
8. Laurence Houlton and Jackie Morehead, employees of the Sarpy County Assessor’s Office, were present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

9. The Property Record Card (PRC) submitted by the County Board at the hearing indicates that the Taxpayer purchased the Subject Property for \$100,001 in July 2006.
10. The Property Record Card for the Subject Property indicates that the County Board’s \$110,680 determination for tax year 2013 includes \$21,000 for land and \$89,680 for the improvement component.
11. The PRC indicates that the County Board’s \$89,680 determination attributable to improvements for tax year 2013 is based on a cost approach mass appraisal model.
12. The PRC indicates that the Subject Property is located in the BBC Birchcrest Add/Mission neighborhood. The Property Record Profile indicates that the Subject Property is included on County map number 2961-26-0-100-12-000-0049.
13. The Property Record Profile indicates that the Subject Property is a 962 square foot raised ranch residence built in 1962, with an effective age of 51 years. The PRC rates the Subject Property’s quality and condition as “Average.”

14. The Taxpayer submitted documentation analyzing the sale/assessment history of three homes near the Subject Property in support of its assertion that the actual value of the Subject Property was \$92,469 for tax year 2013. This documentation includes Property Record Cards for each of the parcels and a spreadsheet with proposed adjustments and calculations regarding the values of the parcels. The Taxpayer did not submit a fee appraisal of the Subject Property or other parcels at the hearing.
15. The County submitted a listing of all of the assessed values for properties in the neighborhood of the Subject Property, statistical reports of sales in the Subject Property's neighborhood which included sales assessment ratios for the sold properties, a table listing nine properties it deemed comparable to the Subject Property and the Property Record Cards for these properties.

STANDARD OF REVIEW

16. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²
17. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "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. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
18. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

GENERAL VALUATION LAW

20. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.⁷

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2010 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

21. “Actual value, market value, and fair market value mean exactly the same thing.”⁸
22. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.⁹
23. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁰
24. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹¹
25. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. 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. 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.¹²

VALUATION ANALYSIS

26. The Taxpayer averaged the per square foot sale value of three parcels in close proximity to the Subject Property, averaged the per square foot assessed value of these same three parcels and then averaged these averaged per square foot values for purposes of arriving at its \$92,469 opinion of value. The Taxpayer’s approach can best be described as an attempt to value the Subject Property using the sales comparison approach.
27. The Commission notes that averaging is not an acceptable part of the sales comparison approach. “Simply averaging the results of the adjustment process to develop an averaged value fails to recognize the relative comparability of the individual transactions as indicated by the size of the total adjustments and the reliability of the data and methods used to support the adjustments.”¹³
28. Therefore, the Commission is unable to place significant weight on the Taxpayer’s \$92,469 opinion of value to the extent it relies on the use of the averaged per square foot values of the three parcels submitted for consideration.
29. The sales comparison approach has a defined systematic procedure that requires, among other steps, that the individual appraising the Subject Property “[l]ook for differences between the comparable sale properties and the subject property using the elements of comparison. Then adjust the price of each sale to reflect how it differs from the subject

⁸ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

⁹ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁰ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹¹ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹² Neb. Rev. Stat. § 77-112 (Reissue 2009).

¹³ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 308.

- property or eliminate that property as a comparable. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.”¹⁴
30. The elements of comparison include real property rights conveyed in the sales, any financing terms, condition of the sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, use and zoning, and any non-realty components of value.¹⁵ Consideration of many of these characteristics is required under Nebraska Statutes section 77-1371.¹⁶
 31. The Taxpayer did not provide sufficient analysis regarding adjustments based on the elements of comparison referenced above to determine whether the three parcels submitted for consideration were truly comparable.
 32. Based on a review of the documents and statements submitted at the hearing by the parties, the Commission finds that the Taxpayer’s \$92,469 opinion of value does not constitute clear and convincing evidence that the County Board’s \$110,680 determination for tax year 2013 was arbitrary or unreasonable.
 33. Guidance for purposes of applying the sales comparison approach and other valuation methods is widely available in the case where a Taxpayer determines that it is not cost effective to obtain a fee appraisal. For example, the Commission is allowed by statute and by its rules and regulations to consider many publications that provide guidance regarding the sales comparison approach and other valuation techniques. These publications, which are listed at the Commission’s “Rules/Regulations” website link (Chapter 5, section 031), can be found at area public libraries and law school libraries. Guidance regarding valuation techniques can also be found at the Commission’s “Decisions” website link.

GENERAL EQUALIZATION LAW

34. “Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution.”¹⁷ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁸ The purpose of equalization of assessments is to bring the assessment of different parts of a taxing district to the same relative standard, so that no one of the parts may be compelled to pay a disproportionate part of the tax.¹⁹
35. In order to determine a proportionate valuation, a comparison of the ratio of assessed value to market value for both the subject property and comparable property is required.²⁰
36. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.²¹ Taxpayers are entitled to have their property assessed uniformly and

¹⁴ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at pgs. 301-302.

¹⁵ *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (2008), at p. 141.

¹⁶ Neb. Rev. Stat. §77-1371 (Reissue 2009).

¹⁷ *Neb. Const.*, Art. VIII, §1.

¹⁸ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991).

¹⁹ *MAPCO Ammonia Pipeline v. State Bd. of Equal.*, 238 Neb. 565, 471 N.W.2d 734 (1991); *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, (1999).

²⁰ *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623 (1999).

²¹ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

proportionately, even though the result may be that it is assessed at less than the actual value.²²

37. The constitutional requirement of uniformity in taxation extends to both rate and valuation.²³ If taxable values are to be equalized it is necessary for a Taxpayer to establish by “clear and convincing evidence that valuation placed on his or her property when compared with valuations placed on similar property is grossly excessive and is the result of systematic will or failure of a plain legal duty, and not mere error of judgment [sic].”²⁴ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”²⁵
38. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”²⁶

EQUALIZATION ANALYSIS

39. The Taxpayer asserted that the Subject Property was overvalued in comparison to the assessed valuations of three comparables referenced previously. In support of this assertion, the Taxpayer submitted documentation analyzing the assessment history of the three parcels. This documentation includes Property Record Cards and a spreadsheet
40. The County submitted documentation analyzing the assessment history of nine parcels referenced previously that the County deemed comparable to the Subject Property including Property Record Cards and a spreadsheet.
41. The County also submitted statistical reports comparing the ratio of assessed value to market value for other real property in the neighborhood of the Subject Property and a listing of all assessed values for property in the neighborhood of the Subject Property.
42. As indicated previously, an order for equalization requires evidence that either: (1) similar properties were assessed at materially different values;²⁷ or (2) a comparison of the ratio of assessed value to market value for the Subject Property and other real property **regardless of similarity** indicates that the Subject Property was not assessed at a uniform percentage of market value.²⁸
43. The evidence submitted demonstrates that similar properties were assessed at similar values and that the Subject Property was assessed at a uniform percentage of market value when compared to other real property.

CONCLUSION

44. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.

²² *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987).

²³ *First Nat. Bank & Trust Co. v. County of Lancaster*, 177 Neb. 390, 128 N.W.2d 820 (1964).

²⁴ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

²⁵ *Id.* at 673, 94 N.W.2d at 50.

²⁶ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁷ See, *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

²⁸ See, *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597 N.W.2d 623, 635 (1999).

45. The Taxpayer has not adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Sarpy County Board of Equalization determining the value of the Subject Property for tax year 2013 is affirmed.
2. That the taxable value of the Subject Property for tax year 2013:

Land	\$ 21,000
<u>Improvements</u>	<u>\$ 89,680</u>
Total	\$ 110,680

3. This decision and order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
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 2013.
7. This order is effective on September 10, 2014.

Signed and Sealed: September 10, 2014.

Thomas D. Freimuth, Commissioner