2022 State Board of Equalization

August 9, 2022

File No.: 2022-WEST FARGO-INVERTASE

County or City: City of West Fargo

Appellant: Invertase LLC

Issue: Appellants appealing property valuations

Summary: Invertase LLC represented by Tami Norgard, Vogel Law Firm, requests a reduction and correction to the valuation on four properties located within the City of West Fargo.

Parcel 1, 02-3000-01293-000—5102 Sheyenne ST
Parcel 2, 02-3000-01283-010—320 52nd AVE W
Parcel 3, 02-3000-01283-020—320 52nd AVE W
Parcel 4, 02-3000-01285-000—5146 Sheyenne ST

Notes:
Appellant Information – 2022 State Board of Equalization

County or City: Cass County/West Fargo
Appellant: Invertase, LLC
Type of Appeal: Residential

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Please email or mail any supporting documentation to: propertytax@nd.gov or Office of State Tax Commissioner Attn: Property Tax 600 E. Boulevard Ave. Bismarck, ND 58505-0599

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EASEMENTS & R/W OF REC.
**12-28-11 PETITIONED SPL FRM 02-3000-01283-000 PER DOC#1330004
SPL#2011-116

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North Dakota State Board of Equalization
Attn: Brian Kroshus, Tax Commissioner & Secretary
North Dakota Capitol Building
600 E. Boulevard Ave., Dept 127
Bismarck, ND 58505

Re: Objection to Increase in Real Estate Assessments for Invertase, LLC
5146 Sheyenne Street
320 52nd Avenue W
5102 Sheyenne Street
Parcel 02-3000-01283-010
Dispute of Tax Assessment and Request for Correction

Dear State Board of Equalization:

Invertase, LLC hereby requests a reduction and correction to the valuation and corresponding tax assessment for the four properties identified above, which were recently purchased by Invertase, LLC (hereinafter “Properties”). The City of West Fargo’s assessment of the Property is a grossly erroneous calculation of the true and full value of the Properties. The City increased the taxable value on these four parcels from an aggregate total of $1,261,100 to a new total of $3,042,900. This is an increase over these 4 parcels of property, which all retained the same uses, by $1,781,800 in just one tax year. The incredible increase in just one year should raise red flags with the Board of Equalization, particularly as these increases relate to valuation appeals in the matter of Tevye, LLC and Michael and Deanne Svaleson.

ARGUMENT

"All assessments of any taxable property in excess of the full and true value in money are subject to correction and abatement and refund. . .” N.D.C.C. § 57-23-01. The Board may abate or refund, in whole or in part, any assessment or tax upon real property when the assessment on the property is invalid, inequitable, or unjust.” Dakota Northwestern Assoc. Ltd. P’ship v. Burleigh County Bd. Of Cnty Comm’rs., 2000 ND 164, ¶ 9 (citing N.D.C.C. § 57-23-04(1)(h). Here, the City inequitably and unjustly assessed the Invertase parcels when it more than doubled the assessment valuation simply because of a change in ownership.

The US Supreme Court holds that a residential market includes the entire metro area, not just the city limits. *Hills v Gautreaux*, 425 U.S. 284, 299 (1976). The North Dakota Supreme Court adopts the International Association of Assessing Officers’ definition of market value. *Jefferson Apartments*, 2020 ND 20, ¶ 12. That is, “the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arms-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used.” *Id.*

The North Dakota Administrative Code defines “arm’s length” as a contract executed by a willing buyer and a willing seller with neither being affiliated. N.D.A.C. § 81-09-02-09. While not North Dakota law, the Ohio Supreme Court created an elemental test that is illustrative. There, an arm’s length transaction requires: 1) the deal must be voluntary, without compulsion or duress; 2) it must take place in the open market; and 3) the parties must be acting in their own self-interests regarding this transaction. *Tanson Holdings, Inc. v. Darke County Bd. of Rev.*, 660 N.E.2d 1216, 1218 (Ohio 1996) (emphasis added).

1. **Invertase’s Assemblage Purchases do not Reflect Market Value**

The City Assessor’s office is aware that these four parcels were purchased by the owner of the adjacent Tevye, LLC-owned property for the purposes of assemblage with other commonly owned property. None of the properties purchased by Invertase were publicly listed for sale. These four purchases would not qualify as arms-length transactions between a willing seller and willing buyer in an open market because the properties were never subjected to the open market. No licensed appraiser would ever use any of these purchases as a comparable sale or believe that these sales create the market for real estate values in this area. The sales price of these parcels should not be reflected in their property valuation for tax purposes, since they are all acknowledged to be sales with particular motivation, as opposed to indicative of any larger market value.

2. **Cass County Taxes Property Inequitably Throughout its Subdivisions**

The State Board of Equalization has the power to equalize assessments of property between the assessment districts of the same county. N.D.C.C. § 57-14-04. I urge you to consider the unequal tax treatment that the City and County placed on Invertase’s property compared to both other West Fargo property and Horace property. Since purchase, the Invertase Properties’ use has not changed.
Therefore, the City lacks the basis for arbitrarily escalating the Properties’ assessment compared to similarly situated land.

Invertase’s parcel information and values are attached, with the first three parcels consisting of what used to be rural residences and the final parcel is farmland. Of note, these parcels of land have retained the same uses since the ownership transfer. In summary:

- 5146 Sheyenne Street was valued at $172,100 and is now valued at $348,800.
- 320 52nd Avenue W was valued at $642,100 and is now valued at $794,300.
- 5102 Sheyenne Street was valued at $408,600 and is now valued at $1,117,700.
- Parcel 02-3000-01283-010 was valued at $38,300 and is now valued at $743,800.

The City Board of Equalization’s summary and visual depiction of the properties, along with the 2021 and 2022 assessment number are as follows:

To underscore the significant changes, the final parcel noted above was owned by a local developer. It had previously been assessed at $38,000 or less for the last 6 years; yet, once Invertase purchased it, the Assessor’s taxable value skyrocketed to $782,000 (Parcel 02-3000-01283-010). The Properties’ use is not changing. It is my understanding that a new Invertase parcel is now valued at $4.30 per square foot, while the prior owner who still owns the identical adjacent land is being assessed based up $0.03 per square foot, despite the continuation of the same exact use as before. This is not equitable taxation for two almost identical, adjacent properties, used similarly. This underscores just how exaggerated Invertase’s valuation is. If property is to be taxed based upon use in North Dakota, it is inequitable to be taxing this land differently since the use hasn’t changed.
Further, to tax the single-family residences now owned by Invertase as if they are development land is inequitable and unrealistic.

As referenced in Tevye’s appeal letter, there is a 37.19 acre, 9,738 square foot home at 7010 52nd Ave S Horace, ND 58047 with its land value assessed at $376,500. The total land square footage is 1,619,996 which comes out to $0.23 per square foot. This Horace property is assessed far closer to what the disputed parcels were assessed at before Invertase purchased them. The properties’ assessed value should reflect this original valuation.

3. Other Considerations
   a. West Fargo is Using the Invertase Assemblage Purchases to Overinflate the Surrounding Market

Of particular concern, it appears the City Assessor is dramatically raising the values of nearby houses by purportedly using these four sales as the City’s justification for increasing other property values. The City raised the value of the Svaleson/Schatz property just north of Tevye, LLC by an astounding $680,000 this year, from $1.99 million to $2.6 million. When the Svaleson/Schatz owner called the City Assessor to see if this was a mistake, he was specifically advised that the basis for the $680,000 increase was that his neighbor overpaid for these Invertase parcels, thus pushing up the property value for Svaleson/Schatz. As such, the overvaluation of the Invertase parcels has not only impacted Invertase, but it is erroneously pushing up valuation and taxes for other nearby landowners. The City Assessor should not be using the sales prices of these properties to set the tax assessed value of these four properties or otherwise claim these assemblage purchases somehow dramatically change the market for any neighbors in this area. These four private sales do not create a new market for property generally in the area because the properties were never exposed to the market. To do so would violate generally accepted appraisal rules and practices that are standard in the industry.

At the City Board of Equalization hearing, one City Board/Commission member surmised that these Invertase sales should be considered a market since there was obviously a willing seller, noting that no one forced these landowners to sell. This comment underscores a lack of understanding by the City of what market value actually means. It should be a willing buyer and willing seller, with neither under any compulsion or motivation to buy or sell these particular properties. And most importantly, the property must be exposed to the open market to create an arm’s length transaction. The Invertase sales were a private contract request initiated by the buyer for specific purposes to assemble these parcels with the buyer’s other parcel. These are not market sales and should not justify increases on these parcels or adjacent landowners like the Svaleson/Schatz parcel, which is also being appealed to this Board of Equalization.
August 3, 2022
Page 5

I question whether there are any comparable sales in this market that would support the dramatic increases applied by the City to these four parcels. Invertase has not conducted an appraisal on the four parcels, but our local appraisers hired for a related assessment objection support the position that Invertase’s assemblage purchases do not reflect the market value of the land.

b. West Fargo is Driving Residents from Their Long-Time Homes

The other significant reason these valuations are excessive is obvious in the City’s response to Invertase’s objections. The City advises that it is simply updating the valuation of land, which hasn’t been done since 2016. Obviously, West Fargo has been one of the fastest growing cities in the state in recent years, with elevated prices for bare development land. It is inequitable for the City to use those bare land values to the Invertase parcels (or Svaleson/Schatz and Tevye parcels). In its last paragraph of Exhibit A, the City references that it needs to update the values of these ‘land heavy parcels’ to reflect the higher values, along the same lines of new development land. This is illogical. The Invertase parcels include three moderate homes on various acreages. One home increased in value in one year by over $700,000, to an astounding $1.1 million for a home that has historically been assessed under $400,000. This is an outrageous increase of 270% increase in value. Another parcel was increased 25%. A third parcel’s valuation increased 200%. The final parcel increased in value an astounding 1900% with no change in use. The only thing that changed is that the owner of Tevye LLC purchased these four parcels. The owner of a single family residence should not be burdened with a $700,000 valuation increase due to it, purportedly, being compared to new development land. This is a single family home on a larger lot and is not a parcel that will be sold for development.

The practical result of this approach to property valuation is that the City is making it too expensive for these residents to stay in their home. This method likely forces any residents with larger lots (formerly rural homes) to move and/or sell off their land to larger development projects, since it would not be realistic that someone seeking a moderate home would be willing or able to afford the taxable value or resulting taxes. This underscores why this lot and moderate house should not be treated as vacant development land, since there is no expectation that these and other nearby houses with larger acreages are going to be redeveloped. Stated another way, a developer may choose to pay an exorbitant amount for vacant development land since they can expect a generous return on investment after development. In the case of single-family residences on larger lots that used to be rural residences outside of West Fargo, no one should be expected to pay a similar elevated ‘land value’ for these properties since there is no expected return on investment from simply living in these “land heavy” single family residences. There is an inherent inequity in assuming that vacant development land prices should dramatically increase the taxes and value of these long-term West Fargo periphery residents who happen to have larger lots.
August 3, 2022
Page 6

As such, Invertase, LLC requests that the 2021 taxable market value for each parcel identified be continued, or apply only minimal increases consistent with the increase in the adjacent similarly situated land. Additional information will be presented at the hearing.

Frankly, the City and County should consider adopting a practice or policy to obtain property specific appraisals by licensed appraisers before increasing the true and full value of any residential parcel by a significant amount, as such a large jump is inherently suspect.

Sincerely,

[Signature]

Tami Norgard