

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 16R 0197

Decision and Order Affirming the
Determination of the Sarpy
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with an 888 sq. ft. residence, with a legal description of: Lot 33A2 Marian Park & 10' Vac Lane Adj, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$120,650 for tax year 2016.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$77,446 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$120,650 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 30, 2017, at the Omaha State Office Building, 1313 Farnam, Third Floor, Room H, Omaha, Nebraska, before Commissioner Steven A. Keetle.
7. Scott W. Bloemer was present at the hearing for Bel Fury Investment Group, LLC (Taxpayer).
8. Larry Houlton of the Sarpy County Assessor's Office (the County Appraiser) were present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "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." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the Subject Property was over assessed due to the condition of the residence as of the assessment date.
17. The Taxpayer stated that the renovation of the Subject Property was only partially complete as of the assessment date and that therefore the condition rating should be lower.
18. The Taxpayer presented receipts for work to remedy plumbing problems, water damage, mold, painting, and carpet and other floor coverings. However, the receipts indicate that the majority of this work was completed prior to the assessment date.
19. The County Appraiser indicated that an interior and exterior inspection of the Subject Property was performed in July of 2015, and that based on this inspection the condition rating and amount/type of basement finish were adjusted to reflect the work done to the Subject Property.
20. The Taxpayer alleged that the improvements on the Subject Property were overvalued compared to other comparable properties.

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(9) (2016 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).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

21. The Taxpayer asserted that the Subject Property should be assessed at the same per square foot amount as the adjusted value of a property located at 908 Harrington Ave.⁹ The Taxpayer did not provide the Property Record File (PRF) for this property to allow the Commission to determine if it was comparable to the Subject Property. The information presented however indicates that the property located at 908 Harrington Ave, is a one and one half story property while the Subject Property is a one story property, has an attached garage and has a different condition rating than the Subject Property.
22. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
23. The County Board presented the PRFs for comparable one story properties to support the County Appraiser's recommendation.
24. The Taxpayer further alleged that the County's comparable properties were located too far away from the Subject Property to be comparable.
25. The County submitted a map of the B02 market area in which the Subject Property and the County's comparable sales and valuation comparables were located.
26. While the County's valuation comparables are on the opposite end of the B02 market area, they are similar to the Subject Property in use, age, style (i.e. one story), and size.
27. 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.
28. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is Affirmed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 26,000
<u>Improvements</u>	<u>\$ 94,650</u>
Total	\$120,650

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 (2016 Cum. Supp.).

⁹ The Taxpayer made an adjustment to the assessed value for bedrooms, land, and weighted below ground finished square feet, but the basis of these adjustments was not presented.

¹⁰ See generally, International Association of Assessing Officers, Property Assessment Valuation, at 169-79 (3rd ed. 2010).

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on December 4, 2017.

Signed and Sealed: December 4, 2017

Steven A. Keetle, Commissioner