

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

Bel Fury Investments Group, LLC,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 16R 0198

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

**Background**

1. The Subject Property is a residential parcel improved with a 962 square foot residence and a legal description of: Lot 49 Birchcrest, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$114,795 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 \$103,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$114,795 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer presented an appraisal of the Subject Property(the Taxpayer’s Appraisal) obtained for refinancing purposes and alleged that the assessed value should be the same as the appraisal value.
17. The Taxpayer’s Appraisal’s determination of value of \$103,000 is as of January 2, 2014, two years prior to the assessment date of January 1, 2016.<sup>9</sup> No adjustment to this value was presented to account for this difference in assessment dates.
18. The Taxpayer’s Appraisal indicates that it placed the most weight on the income approach to valuation, however the income approach appears to be entirely based on the actual rent received for the Subject Property and contains no information on typical or market rents.<sup>10</sup>

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

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

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

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

<sup>9</sup> See, Neb. Rev. Stat. §77-1301(1) (2016 Cum. Supp.).

<sup>10</sup> “Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect typical management and smoothed or stabilized across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis.” International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

19. The County Appraiser indicated that real property values have increased in the two years between the effective date of the appraisal and the assessment date in question in this appeal.
20. The County Board offered a list of sales in the Subject Property's neighborhood, a listing of all assessed values in the Subject Property's neighborhood, and Property Record Files for other properties that demonstrate that overall residential real property values in Sarpy County have increased since January 1, 2014.
21. The Taxpayer alleged that the improvements on the Subject Property were overvalued as compared to other comparable properties.
22. The Taxpayer offered the PRF's for two properties that he alleged demonstrated that the Subject Property was over assessed.
23. Differences between the assessed value of the Subject Property and these two properties are accounted for in differences in condition, square footage and other amenities added to the improvements (i.e. porches, garages, decks, etc).
24. The Taxpayer finally alleges that the assessed value of the Subject Property should be reduced due to the condition of the sewer line and wood deck.
25. The information and statements presented at the hearing demonstrate that the value of the deck on the Subject Property should be depreciated by 80%<sup>11</sup>, and that the assessed value for the improvements on the Subject Property should be \$91,014 for tax year 2016.<sup>12</sup>
26. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
27. The Taxpayer has 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 vacated.

## 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 Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 21,000
<u>Improvements</u>	<u>\$ 91,014</u>

<sup>11</sup> The County Assessor testified that if the assessed value of the deck was depreciated by 80% then the overall physical and economic depreciation should not be applied to the already depreciated assessed value of the deck.

<sup>12</sup> \$5,720 RCN of Deck depreciated by 80% = \$1,144 RCNLD of Deck. \$134,535 Total RCN - \$5720 RCN Deck = \$128,815 RCN. 31.6% physical depreciation and -2% economic depreciation (negative depreciation being appreciation) calculated independently and applied in sequence result in an RCNLD of the remaining improvements of \$91,018. (\$128,815 RCN x 31.6% = \$40,706 physical depreciation, \$128,815 - \$40,706 = \$88,109 RCN less physical depreciation. \$88,109 x -2% = -\$1,762 economic depreciation. \$88,108 RCN less physical depreciation + \$1,762 = \$89,870 RCNLD of improvements except the deck. \$89,870 RCNLD of improvements except deck + \$1,144 RCNLD of Deck = \$91,014.

Total \$112,014

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.).
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

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Steven A. Keetle, Commissioner