

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0411 & 17R 0542

Decision and Order Reversing the
Determinations of the Douglas
County Board of Equalization

Background

1. The Subject Property is a two story residential townhouse, with a legal description of: The Horizon, Lot 1 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$64,700 for tax year 2016.
3. Bel Fury Investments Group, LLC, (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$7,000 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$64,700 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$70,300 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$22,000 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$41,000 for tax year 2017.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on September 26, 2018, at the Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Scott W. Bloemer was present at the hearing for the Taxpayer.
11. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

13. The Commission’s review of the determination of the County Board of Equalization is de novo.²
14. 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
15. 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
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. 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
18. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

19. The Taxpayer alleges that the Subject Property should be assessed at its purchase price for tax year 2016 and at the amount determined by a USPAP Compliant appraisal report for tax year 2017.
20. The Taxpayer purchased the Subject Property in November of 2015. After the purchase, extensive work was done to rehabilitate the property prior to August of 2016. The plumbing and electrical systems had to be repaired or replaced due to damage caused by freezing plumbing, all of the basement finish had to be removed and mold remediated before the basement finish could be replaced, all of the flooring in the Subject Property was replaced, the bathroom and kitchen had to be remodeled including removal and

² See, Neb. Rev. Stat. §77-5016(8) (Reissue 2018), *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).

³ *Brenner* at 283, 811.

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

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. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

replacement of damaged bathtub and enclosure, kitchen counters and cabinet faces, kitchen sink and appliances, as well as remediation of water damage throughout and repairs to the woodwork, exterior doors and windows. The Taxpayer estimated that repairing the Subject Property cost approximately \$18,000 to \$20,000 but presented no quantifiable information as to the actual cost to renovate the Subject Property.

21. The Taxpayer produced an appraisal report for the Subject Property determining a value of \$22,000 as of August 19, 2016, which had been presented to the County Board for the 2017 protest. The Taxpayer stated that the Subject Property had been rehabilitated prior to the August 19, 2016 effective date of the appraisal report.
22. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.⁹
23. The record of the County Board proceedings for the 2017 assessment indicate that the County Board referee did not rely on the appraisal report because all of the sales utilized in the report were foreclosure sales.¹⁰
24. The County Board presented a list of all qualified sales in the economic area of the Subject Property for both tax year 2016 and 2017, covering all sales within all neighborhoods included in the larger economic area within a three year period. These lists indicate that there was not a single qualified sale of a townhouse property in the entire economic area within which the Subject Property is located. Additionally these lists indicate that there was not a single qualified sale of any residential property in the neighborhood in which the Subject Property is located within that same three-year period.
25. The lack of qualified sales indicates that the appraisal report's use of foreclosure sales, while typically avoided when performing an appraisal, is reasonable. Additionally, all of the sales used in the appraisal report are in the same subdivision and town home development, are all of the same quality and condition (after the Subject Property was rehabilitated) and occurred within approximately three years of the assessment date.
26. The date of the opinion of value in the appraisal report is between the 2016 and 2017 tax years, but based on the lack of sales in the Subject Property's economic area (as defined by the County Assessor's Office) the appraisal report may be considered evidence of value for both the 2016 and 2017 assessment years.
27. As noted earlier, the Subject Property had not been renovated as of the 2016 assessment date and the information presented to the Commission was not sufficient to quantify the actual cost of renovation for purposes of determining the impact on the value of the Subject Property. Combined with the appraisal report however, information before the Commission demonstrates that the assessed value of the Subject Property as of the 2016 assessment date could be no higher than \$22,000.

⁹ *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

¹⁰ The Taxpayer's appraisal report was not reviewed by the County Board in 2016 because it had not been prepared prior to the protest hearing.

28. Based on the information presented at the hearing the Commission finds and determines that the actual value of the Subject Property as of the 2016 and 2017 assessment dates is \$22,000.
29. 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.
30. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2016 and 2017, are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 and 2017 is: \$22,000.
3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2018).
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 years 2016 and 2017.
7. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner