

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

Bel Fury Investments Group, LLC,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 16R 0196

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

**Background**

1. The Subject Property is a residential property improved with a 1,152 square foot residence and a legal description of: Lot 26 Hanson's Lakes, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$184,396 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 \$121,032 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$184,396 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. Martin Becker 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 Subject Property is located on Lake 3 of the Hanson’s Lake Subdivision.
17. The Taxpayer alleged that the assessed lot value of the Subject Property was higher than other comparable properties.
18. The Taxpayer presented three properties in Hanson’s Lake Subdivision that had lower lot values than the Subject Property.
19. There are four different lakes in the Hanson’s Lake Subdivision, Lakes 1 & 4 are smaller and do not allow power boats, Lakes 2 & 3 are larger and allow power boats.
20. The County Appraiser indicated that a market study of lots at Hanson’s Lake had indicated that lots on power boat lakes sold for more than lots on non-power boat lakes, additionally Lake 1 was determined to be a submarket of Hanson’s Lake as lots on that lake sold differently than the other lots in the Subdivision. The County Appraiser also explained that lake lots sold for a greater amount the farther out on a point the lot was.
21. The County Board presented a map of all of lots at Hanson’s Lake as well as a listing of their assessed values.

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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.).

22. The Commission finds that the three lots the Taxpayer offered as comparables are not comparable to the Subject Property lot and that differences in their assessed values can be attributed to differences in their locations.
23. The Taxpayer alleged that the improvements on the Subject Property were overvalued as compared to other comparable properties.
24. 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 17515 Kraft Drive.<sup>9</sup> 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.
25. The County Appraiser stated that he inspected the Subject Property in March of 2015, and that based on this inspection and a review of the assessment information contained in the County Assessor's records he would recommend that the assessed value of the improvements on the Subject Property be reduced to \$73,574 to account for its hardboard siding.
26. The County Board presented the PRFs for comparable properties to support the County Appraiser's recommendation.
27. The Taxpayer stated that the Subject Property had originally been a seasonal use property that was converted to year round use. The Taxpayer asserted that as of the assessment date, the Subject Property needed a new well and pumping equipment to make the water in the residence more reliable, increase the water pressure, and prevent the well from freezing up in the winter.
28. The Taxpayer presented information which indicated that the cost to dig a new well and replace the unreliable pumping equipment to establish reliable water service on the Subject Property was \$7,500.
29. Based on all of the information and documentation provided the Commission finds and determines that the assessed value of the improvements on the Subject Property for tax year 2016 is \$66,074.
30. 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.
31. 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.

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<sup>9</sup> The Taxpayer made an adjustment to the assessed value for bathrooms, but the basis of this adjustment was not presented.

2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$110,000
<u>Improvements</u>	<u>\$ 66,074</u>
Total	\$176,074

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