

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

Bel Fury Investments Group, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 15R 0550 & 17R 0532

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

**Background**

1. The Subject Property is a residential parcel improved with a 1,600 sq. ft. one and one-half story residence, with a legal description of: Country Club Dist, Lot 3 Block 22, Irreg S 46 ft., Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$125,500 for tax year 2015.
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 \$94,100 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$125,500 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$152,700 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$125,200 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$140,000 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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup>
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."<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>
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.<sup>5</sup>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

19. For tax year 2015 the Taxpayer alleged that the per square foot assessed value of the Subject Property was higher than comparable properties.
20. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
21. The Taxpayer presented as comparable properties three properties located near the Subject Property and alleged that the Subject Property should be assessed at a per square foot amount nearer to that of these properties.

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<sup>2</sup> 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).

<sup>3</sup> *Brenner* at 283, 811.

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

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<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. 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

<sup>9</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

22. The County Appraiser stated that the properties presented by the Taxpayer were located in a different subdivision and neighborhood than the Subject Property. Additionally the Subject Property has features that the properties presented by the Taxpayer don't have such as masonry brick construction and plaster interiors that differentiate the Subject Property from the others offered by the Taxpayer.
23. The County Board presented information regarding sales located in the same neighborhood as the subject property that were utilized when determining assessed values for the Subject Property and other comparable properties located in the same neighborhood.
24. The Commission finds that properties presented by the Taxpayer for the 2015 appeal are not comparable to the Subject Property.
25. For tax year 2017 the Taxpayer alleged that the assessed land value was too high and that the result was that the Subject Property was assessed at a higher relative value than a comparable property on a per square foot basis.
26. The County Appraiser stated that the County Assessor's office did a land value study for the 2017 tax year that reallocated the value attributed to the land component of residential properties in Douglas County, which was the cause of the increase in the assessed value of the land component of the Subject Property. The assessed land value component of the Subject Property had not changed in over a decade preceding the 2017 land value study.
27. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>10</sup> For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.<sup>11</sup>
28. The Taxpayer presented as a comparable a single property located near the Subject Property but in a different subdivision than the Subject Property.
29. The County Appraiser stated that the property presented by the Taxpayer was located in a different subdivision and neighborhood than the Subject Property. Additionally the Subject Property has features that the Taxpayer's property doesn't have such as masonry brick construction and plaster interiors that differentiate it from the Subject Property.
30. The County Board presented a list of sales of property in the economic area of the Subject Property; this economic area contained the subdivision in which the Subject Property is located as well as the other property presented by the taxpayer. This list of sales demonstrated that the sales prices and assessed values on a per square foot basis are higher in the Subject Property's subdivision than they are in the subdivision of the other property presented.
31. The Commission finds that the property presented by the Taxpayer for the 2017 appeal is not comparable to the Subject Property for purposes of determining valuation.

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<sup>10</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988)

<sup>11</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

32. 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.
33. 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 2015 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 7,200
<u>Improvements</u>	<u>\$118,300</u>
Total	\$125,500

3. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 20,000
<u>Improvements</u>	<u>\$120,000</u>
Total	\$140,000

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2015 and 2017.
8. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

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Steven A. Keetle, Commissioner