

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15R 0560 & 17R 0541

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 1,472 square foot one and one-half story residence and a legal description of: Florence Field Lot 1 Block 19, Irreg Sthly 100.7 ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$61,200 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 \$46,500 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$61,200 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$61,200 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$50,400 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$61,200 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
19. Under the Commission’s Rules & Regulations, the Commission cannot find a taxable value in excess of the highest taxable value for which notice was given by the County Assessor, the County Board of Equalization, or the Property Tax Administrator, unless notice of a higher taxable value and the intent to offer proof in its support is given by a party.⁹

Findings of Fact & Conclusions of Law

20. For tax year 2015 the Taxpayer argued that the assessed value of the Subject Property is too high based on the condition of the property.
21. The Taxpayer described the condition of the property including a roof that has experienced hail damage, rotting trim, old windows, low water pressure, original

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).

⁹ 442 Neb. Admin. Code, Ch. 5 § 016.02A (2011).

- electrical system, and dated and worn interior. The Taxpayer presented no quantifiable information as to the cost to correct these conditions of the Subject Property but indicated that the condition rating should be fair rather than average for tax year 2015.
22. The market calculation detail contained in the Property Record File (PRF) for the Subject Property supplied by the County Assessor indicates that a reduction was applied to the calculated value to account for a condition rating of poor for tax year 2015, which would be lower than the fair condition rating and reduce the assessed value accordingly.
 23. The PRF indicates that for tax year 2015, the County has carried forward a value determined by the County Board for the Subject Property in tax year 2011 that is lower than the assessed value calculated utilizing the County Assessor's valuation model with the condition rating of poor.
 24. The Commission may consider all questions necessary to determine taxable value; however, the County Board did not request or provide notice of an intent to request a higher taxable value than that value determined by the County Board for tax year 2015.
 25. For tax year 2017 the Taxpayer argued that the assessed value of the Subject Property is too high based on the condition of the property. Additionally, for tax year 2017, the Taxpayer argued that the assessed value of the land component of the Subject Property was not equalized with other similar properties.
 26. The PRF for the Subject Property indicated that for tax year 2017 the condition rating of the property has been changed to fair; the Taxpayer alleges, however, that in spite of the change the assessed value has not changed.
 27. The PRF indicates that for tax year 2017 the County has carried forward a value determined by the County Board for the Subject Property in tax year 2011 that is lower than the assessed value calculated utilizing the County Assessor's valuation model with the condition rating of fair.
 28. The Commission may consider all questions necessary to determine taxable value; however, the County Board did not request or provide notice of an intent to request a higher taxable value than that value determined by the County Board for tax year 2017.
 29. The Taxpayer alleges that the value of the land component of the Subject Property is not equalized with other comparable properties.
 30. The Taxpayer presented five properties near the Subject Property that have lower land values than the Subject Property.
 31. The County Assessor indicated that new land values were determined for the 2017 tax year and that the difference in land values was attributable to the difference in the locations of the properties. The Subject Property is located west of 30th Street where the study indicated that land values were higher than the east of 30th Street where all of the properties presented by the Taxpayer are located.
 32. 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.

33. The Taxpayer has adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable. However, the Commission is barred by rule from raising the value of the Subject Property; thus, the decisions of the County Board must be affirmed.

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

Land	\$ 7,900
<u>Improvements</u>	<u>\$ 53,300</u>
Total	\$ 61,200

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

Land	\$ 7,900
<u>Improvements</u>	<u>\$ 53,300</u>
Total	\$ 61,200

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

Steven A. Keetle, Commissioner