

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15R 0563 & 16C 0345

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

Background

1. The Subject Property is a commercial condominium consisting of 7,030 of basement space, with a legal description of: Twin Towers Condominium Lot SCB Block 0 Unit No SCB 1.92%, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$64,600 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 \$14,700 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$64,600 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$64,600 for tax year 2016.
6. The Taxpayer protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$16,900 for tax year 2016.
7. The County Board determined that the taxable value of the Subject Property was \$64,600 for tax year 2016.
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 27, 2018, at Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
10. Scott W. Bloemer, Managing Member, was present at the hearing for the Taxpayer.
11. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney and Micaela Larsen of the Douglas County Assessor/Register of Deeds (the County Appraiser) were 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 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 Subject Property is a commercial property classified as an office condominium on its Property Record File (PRF). The Subject Property is located in the basement of a multi-story office building and due to water infiltration the interior finish has been removed.
20. The Taxpayer indicated that due to litigation between the Taxpayer and the homeowners association for the building that the Subject Property has not been renovated and no attempt has been made to rent it out.
21. The Taxpayer argues that the Subject Property is being used by the Taxpayer as storage space and that therefore it should be valued as storage space. The Taxpayer stated that

² 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).

- there is no allocated parking on the parcel for the Subject Property and that a general lack of parking in the area would make the Subject Property unsuitable for use as office space.
22. The Taxpayer alleges that the assessed value of the Subject Property should be reduced because the value didn't change when the County Assessor's office reduced the condition rating to worn out from average the prior year.
 23. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰
 24. The Taxpayer alleged that the Subject Property was projected to generate no income and that therefore its assessed valuation should be reduced.
 25. The Taxpayer offered no market data to support the calculation of projected income, or evidence of expenses to support this allegation.
 26. The Taxpayer alleged that the Subject Property should be valued at 10% of the assessed value of the above ground finished office space, for the reason that it was essentially worn out basement storage space.
 27. The Taxpayer presented the PRF of above ground office space in the same building as the Subject Property.
 28. Along with the PRFs the Taxpayer offered a chart that made adjustments to the assessed values of the properties to adjust for differences in the characteristics of the properties.
 29. The Taxpayer's opinion of value was determined by valuing it at a percentage of adjusted assessed values of above ground office space in the same building. This approach is not identified in the Nebraska Statutes as an accepted approach for determining the actual value of the subject property as defined by statute.¹¹ Because the method used by the Taxpayer is not identified in statute, proof of its professional acceptance as an accepted mass appraisal would have to be produced for the Taxpayer to prevail. No evidence has been presented to the Commission that the Taxpayer's approach is a professionally accepted mass or fee appraisal approach. Because the Taxpayer's opinion of value was not determined by a professionally accepted appraisal approach, the Commission gives little weight to it.
 30. 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.
 31. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board is arbitrary or unreasonable, and the decisions of the County Board should be affirmed.

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

¹¹ See, Neb. Rev. Stat. §77-112 (Reissue 2018).

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2015 and 2016 are affirmed.
2. The taxable value of the Subject Property for tax year 2015 and 2016 is:

Land	\$ 2,900
<u>Improvements</u>	<u>\$61,700</u>
Total	\$64,600

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 2015 and 2016.
7. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner