

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15R 0569

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

Case No: 17R 0546

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 967 square foot one and one half story residence and a legal description of: Glenn Park Lot 8 Block 3 40 x 146, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$59,300 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 \$21,700 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$59,300 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$59,300 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$41,100 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$59,300 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
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. For tax year 2015 the Taxpayer alleged that the value of the Subject Property should be reduced to its purchase price based on the condition of the property as of the assessment date.
20. For the 2015 assessment date the Taxpayer had not begun to renovate the Subject Property. The Taxpayer described damage to electrical wiring, HVAC systems,

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

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).

plumbing, siding, and roof of the Subject Property as well as mold damage. The Taxpayer estimated that repairing the Subject Property would cost approximately \$25,000 but presented no quantifiable information as to the actual cost to renovate the Subject Property.

21. The County Appraiser, after review of the Property Record File (PRF) for the Subject Property as well as the information relating to the specific damage to the Subject Property presented a revised opinion of value for the Subject Property of \$21,700 for tax year 2015.
22. The Commission finds and determines that the assessed value of the Subject Property for tax year 2015 is \$21,700.
23. For 2017 the Taxpayer stated that the Subject Property had been renovated by the assessment date but alleged that as renovated the per square foot assessed value of the Subject Property was not equalized with comparable properties.
24. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
25. 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.
26. The County Appraiser stated that the properties presented by the Taxpayer were not comparable to the Subject Property because they all had both first and second floor living space while the Subject Property had only first floor living space. The County Appraiser presented information to demonstrate that the per square foot value of above ground living space of a property with first and second floor living space is not calculated based on the same costs or sales as property with only first floor living space and would not be comparable to the per square foot value of the Subject Property due to that factor alone. Additionally, the three properties presented by the Taxpayer are located in a different subdivision and neighborhood than the Subject Property.
27. The Commission finds that properties presented by the Taxpayer for the 2017 appeal are not comparable to the Subject Property.
28. For tax year 2015 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.
29. For tax year 2015 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.
30. For tax year 2017 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.

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

31. For Tax year 2017 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, is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 6,200
<u>Improvements</u>	<u>\$15,500</u>
Total	\$21,700

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017, is affirmed.
4. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 6,200
<u>Improvements</u>	<u>\$53,100</u>
Total	\$59,300

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

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner