

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15R 0582

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

Case Nos: 16R 0417

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 two story townhouse and a legal description of: Sunny Slope 3rd Platting 1st Add Lot 4 Block 8 –Ex N 63.99 Ft-Lt 3 & N .32 Ft Lt 4 Also Known as Unit 9 21.33 x 125, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$84,900 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 \$51,000 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$84,900 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$90,800 for tax year 2016.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$66,200 for tax year 2016.
7. The County Board determined that the taxable value of the Subject Property was \$90,800 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 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. The Taxpayer purchased the Subject Property in June of 2015 for \$51,031 and stated that as of the assessment date no rehabilitation or repairs had been completed.

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

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).

21. For the 2015 assessment date the Taxpayer described extensive water damage to the Subject Property as well as a substantial number of code violations issued by the City of Omaha Planning Department, Code Enforcement Division. 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.
22. The Taxpayer presented the Property Record File (PRF) for three different properties located near the Subject Property for tax year 2015. There is no indication that any of these properties presented required rehabilitation or had code violations as did the Subject Property.
23. The County Board presented information regarding all of the qualified sales that occurred in the economic area of the Subject Property for tax year 2015 used in determining the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property.
24. Due to the close proximity of the arm's length sale to the assessment date, and the extensive repairs needed to rehabilitate the Subject Property, the Commission finds and determines that the assessed value of the Subject Property for tax year 2015 is \$51,000.
25. The Taxpayer alleged that for the 2016 assessment the condition rating of the Subject Property should be fair rather than average and that therefore the per square foot value of the Subject Property is higher than other comparable properties.
26. The Taxpayer notes that the Nebraska Court of Appeals held in *Scribante* that "To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution."⁹
27. The Taxpayer stated that as of the 2016 assessment the Subject Property had been rehabilitated to "rental quality," which was described as code ready and decent, but did not present specific information regarding the actual cost of the rehabilitation.
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
29. The Taxpayer presented the Property Record File (PRF) for three different properties located near the Subject Property for tax year 2016.
30. Along with the PRFs the Taxpayer offered a chart that made adjustments to the assessed values of the comparable properties to adjust for differences in the characteristics of the properties. The Taxpayer stated that these adjustments were based on the Taxpayer's experience in the real estate market and the information contained in the PRFs.
31. Based on the information present regarding the Subject Property and other properties located nearby, Taxpayer did not produce information to demonstrate that the County's determination of a quality rating of Average for tax year 2016 was unreasonable, arbitrary, or incorrect.

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

32. The County Appraiser indicated that the differences in land values were attributable to the differences in the size of the lots and different neighborhoods in which the properties were located.
33. The PRFs presented demonstrate that the differences in per square foot assessments were due to differences in the characteristics of the properties such as condition, amount and quality of basement type and finish, patio, garage, etc.
34. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”¹¹
35. The County Board presented information regarding all of the qualified sales that occurred in the economic area of the Subject Property for tax year 2016 used in determining the value attributed to each of the characteristics of residential properties in those areas, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
36. 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.
37. 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.
38. For tax year 2016 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.
39. For tax year 2016 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	\$ 4,600
<u>Improvements</u>	<u>\$46,400</u>
Total	\$51,000

¹¹ Appraisal Institute, *Appraising Residential Properties*, at 334 (4th ed. 2007).

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016, is affirmed.
4. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 4,900
<u>Improvements</u>	<u>\$85,900</u>
Total	\$90,800

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

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner