

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 15R 0587

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

Case Nos: 16R 0418 & 17R 0558

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

Background

1. The Subject Property is a residential parcel improved with a 620 square foot ranch style residential property, with a legal description of: Sunshine Add Lot 75 Block 0 40 x 153, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$54,000 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 \$34,400 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$54,000 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$51,200 for tax year 2016.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$35,100 for tax year 2016.
7. The County Board determined that the taxable value of the Subject Property was \$51,200 for tax year 2016.
8. The County Assessor assessed the Subject Property at \$51,200 for tax year 2017.
9. The Taxpayer protested this value to the County Board and requested an assessed value of \$34,500 for tax year 2017.
10. The County Board determined that the taxable value of the Subject Property was \$51,200 for tax year 2017.
11. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
12. 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.
13. Scott W. Bloemer was present at the hearing for the Taxpayer.

14. Jennifer D. Chrystal-Clark, Deputy Douglas County Attorney, and Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) were present for the County Board.

Applicable Law

15. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
16. The Commission's review of the determination of the County Board of Equalization is de novo.²
17. 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
18. 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
19. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
20. 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
21. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

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).

Findings of Fact & Conclusions of Law

22. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with a comparable property.
23. 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
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
25. The Taxpayer presented the Property Record Files (PRF) of properties located near the Subject Property. The Taxpayer offered different properties for each tax year.
26. Along with the PRFs the Taxpayer offered a chart that made adjustments to the assessed values of the comparable properties for each tax year 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.
27. 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.
28. The County Assessor stated that the properties presented by the Taxpayer for tax year 2016 were not comparable to the Subject Property as their styles of construction were not comparable. The Subject Property was a ranch style property which had higher per square foot costs of construction and higher resale values than one and one half story properties presented.
29. The Commission finds that the properties presented by the Taxpayer for the 2016 appeals are not comparable to the Subject Property.
30. The properties presented by the Taxpayer for tax year 2015 and 2017 included ranch style properties located near the Subject Property.
31. The PRFs presented demonstrate that the differences in per square foot assessments between the Subject Property and the other properties presented for tax years 2015 and 2017 were due to differences in the characteristics of the properties such as condition, basement size and finish, garage and garage size, patio, etc.
32. The Taxpayer has not demonstrated that the valuations of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction in assessed values under the court’s determination in *Scribante*.

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).

33. The Taxpayer alleged that the condition rating of the Subject Property was too high for tax year 2015 resulting in an assessed valuation that was also too high.
34. The Taxpayer offered information relating to the condition of the property for tax years 2015, 2016 and 2017, which indicated that the condition rating of the Subject Property should be fair for all three tax years and that therefore the condition rating of the Subject Property should be fair rather than average for tax year 2015.
35. Based on all of the information presented, including the PRF for the Subject Property for each of the tax years in question, the Commission finds that the assessed value of the Subject Property for tax year 2015 should be reduced by \$2,800 for a total assessment of \$51,200; this change reflects the reduction of the condition rating from average to fair.
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 years 2016 and 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.
39. For tax years 2016 and 2017 the Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable and the decisions 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2016 and 2017, are affirmed.
3. The taxable value of the Subject Property for tax years 2015, 2016 and 2017 is:

Land	\$ 6,300
<u>Improvements</u>	<u>\$44,900</u>
Total	\$51,200

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, 2016, and 2017.
8. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner