

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15R 0598

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

Case Nos: 17R 0565

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

Background

1. The Subject Property is a residential parcel improved with 1,068 square foot one and one-half story home, with a legal description of: Florence Field, Lot 31 Block 39, N 14 Ft Lt 30 & All, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$73,800 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 \$38,200 for tax year 2015.
4. The County Board determined that the taxable value of the Subject Property was \$73,800 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$48,200 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$37,600 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$48,200 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
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. At the hearing before the Commission the Parties stipulated that for tax year 2015 the Subject Property should have a value of \$1,000 for the land component and \$42,500 for the improvement component for a total assessed value of \$43,500.
20. The Commission accepts the stipulation of the parties and finds that the assessed value of the Subject Property for tax year 2015 is \$43,500.

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).

21. The Taxpayer alleged that the condition rating of the Subject Property for the 2017 assessment is too high and that as a result it is assessed value is too high.
22. The Taxpayer indicated that the Subject Property was worn out but did not offer specific information regarding the condition of the Subject Property to allow the Commission to reduce the condition rating from Average to Fair.
23. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with that of comparable properties for tax year 2017.
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 two 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 two properties presented by the Taxpayer have a condition rating of Fair while the Subject Property is rated as Average.
27. One property was built in 1924, has an unfinished basement, an enclosed solid wall porch, and a 216 square foot detached garage while the Subject Property was built in 1952, has 500 square feet of finished basement, wood deck, and has a larger detached garage.
28. The other property presented by the Taxpayer was built in 1947, which is much closer to the Subject Property's build date of 1952, but it has less basement finish, a smaller attached garage, and a smaller wood deck than the Subject Property.
29. The Commission finds that properties presented by the Taxpayer for equalization purposes for the 2017 appeal are not comparable to the Subject Property.
30. 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.
31. 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.
32. 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.
33. 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.

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

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	\$ 1,000
<u>Improvements</u>	<u>\$42,500</u>
Total	\$43,500

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	\$ 1,000
<u>Improvements</u>	<u>\$47,200</u>
Total	\$48,200

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