

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0406

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

Case No: 17R 0533

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

Background

1. The Subject Property is a residential parcel improved with a 1,196 square foot two story townhouse, with a legal description of: The Horizon Lot 38 block 0 23.10 X 68, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$40,400 for tax year 2016.
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 \$32,800 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$40,400 for tax year 2016.
5. The Douglas Assessor assessed the Subject Property at \$43,900 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$15,600 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$41,000 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. 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

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. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with a comparable property.
20. 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

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).

Nebraska Constitution.”⁹

21. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
22. For tax year 2016 the Taxpayer presented the Property Record File (PRF) of a property located near the Subject Property.
23. Along with the PRF, the Taxpayer offered a chart that made adjustments to the assessed value of the comparable property to adjust for differences in the condition 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 PRF.
24. 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.
25. The PRF presented demonstrates that the differences in per square foot assessments between the Subject Property and the other property presented for tax year 2016 was due to the difference in condition and size.
26. For tax year 2017 the Taxpayer presented an appraisal prepared for a property the Taxpayer alleged was comparable to the Subject Property. The property that was appraised (the Appraised Property) is located in the same townhouse complex as the Subject Property, has the same quality and condition ratings, but was larger, consisting of 1,422 sq. ft. compared to the Subject Property at 1,196 sq. ft..
27. The County stated that the appraisal report should not be relied upon because it was for a different property than the Subject Property and because it relied on foreclosure sales as comparable sales rather than qualified non-foreclosure sales.
28. The Taxpayer produced an appraisal report for the Appraised Property determining a value of \$22,000 as of August 19, 2016, which had been presented to the County Board for the 2017 protest.
29. The record of the County Board proceedings for the 2017 assessment indicate that the County Board referee did not rely on the appraisal report because all of the sales utilized in the report were foreclosure sales. The referee report does not make any mention of the fact that the appraisal report was for a property other than the Subject Property.
30. The County Board presented a list of all qualified sales in the economic area of the Subject Property for tax year 2017, covering all sales within all neighborhoods included in the larger economic area within a three year period. These lists indicate that there was not a single qualified sale of a townhouse property in the entire economic area within which the Appraised Property and Subject Property are located. Additionally, these lists

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).

- indicate that there was not a single qualified sale of any residential property in the neighborhood in which the Subject Property is located within that same three year period.
31. The lack of qualified sales indicates that the appraisal report's use of foreclosure sales, while typically avoided when performing an appraisal, is reasonable. Additionally, all of the sales used in the appraisal report are in the same subdivision and town home development, are all of the same quality and condition as the Appraised Property, and occurred within approximately three years of the assessment date.
 32. The appraisal report in this matter is not for the Subject Property. However, the Appraised Property is in the same complex as the Subject Property, of the same quality and condition, built in the same year, remodeled in the same year, has slightly more square footage, and is located in an area without any other qualified sales. These facts, taken together, demonstrate that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions for tax year 2017.
 33. The determination of value in appraisal report for the Appraised Property does not itemize the value of individual characteristics of the property such as finished basement, deck, or detached garage which would allow the Commission to account for differences between the Appraised Property and the Subject Property. The Commission therefore determines that the value of the Subject Property should be at the same amount per square foot as the Appraised Property for the 2017 tax year.
 34. The Commission therefore finds and determines that the assessed value of the Subject Property for tax year 2017 is \$18,502.¹¹
 35. 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.
 36. 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.
 37. For tax year 2017 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.
 38. For tax year 2017 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.

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 2016 is affirmed.

¹¹ \$22,000 (appraised value) ÷ 1,422 sq. ft. = \$15.47 psf. \$15.47 psf x 1,196 sq. ft. = \$18,502

2. The taxable value of the Subject Property for tax year 2016 is:

Land	\$ 300
<u>Improvements</u>	<u>\$40,100</u>
Total	\$40,400

3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is vacated and reversed.

4. The taxable value of the Subject Property for tax year 2017 is:

Total	\$18,502
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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 2016 and 2017.

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

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner