

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Bel Fury Investments Group, LLC,  
Appellant,  
  
v.  
  
Douglas County Board of Equalization,  
Appellee.

Case Nos: 16R 0408 & 17R 0535

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

**Background**

1. The Subject Property is a residential parcel improved with two homes, a 648 square foot ranch style residence and a 751 square foot one and one half story residence, with a legal description of: Bowery Hill Lot 9 Block 8 N ½ 33 x 138, Omaha, Douglas County Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$51,800 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 \$36,700 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$51,800 for tax year 2016.
5. The County Assessor assessed the Subject Property at \$51,800 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$36,700 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$51,800 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.<sup>1</sup>
13. The Commission's review of the determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

## Findings of Fact & Conclusions of Law

19. The Taxpayer and the County Appraiser agree that the valuation of the Subject Property is difficult to determine because it has two separate and distinct houses located on the same lot.
20. The Taxpayer alleged that for tax years 2016 and 2017 the condition rating of both of the improvements located on the Subject Property should be Fair rather than Average.

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<sup>1</sup> See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. §77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. §77-5018(1) (Reissue 2018).

21. The Taxpayer indicated that if the County Assessor's office inspected the Subject Property the condition rating would be reduced but offered no other information regarding the condition of the Subject Properties. The Commission is therefore unable to determine that the condition ratings of the improvements on the Subject Property were incorrect.
22. Because of the acknowledged unique nature of the Subject Property as a whole the Taxpayer alleged that the assessed value of the improvement component alone (the two separate houses) was not equalized with the assessed value of other comparable improvements for tax year 2016 and 2017.
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
24. The Taxpayer presented as comparable properties the same two properties for both tax years that are 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.
25. The County Board presented information regarding all of the qualified sales that occurred in the economic area of the Subject Property for tax years 2016 and 2017 used in determining the value attributed to each of the characteristics of residential properties in those areas to support the differences in per square foot assessed values between the Subject Property and the other properties presented.
26. One of the properties offered by the Taxpayer has a condition rating of Fair while both homes on the Subject Property have a higher condition rating of Average.
27. One of the homes on the Subject Property is a one and one half story home while none of the properties offered as comparable by the Taxpayer are one and one half story properties.
28. The Property Record Files presented demonstrate that the differences in per square foot assessments between the Subject Property and the other properties presented for tax years 2016 and 2017 were due to differences in the characteristics of the properties such as style of construction, size, condition, basement, patio, etc.
29. 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.
30. 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.

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

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax years 2016 and 2017 is:

Land	\$ 5,500
<u>Improvements</u>	<u>\$46,300</u>
Total	\$51,800

3. 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).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2016 and 2017.
7. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

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Steven A. Keetle, Commissioner