

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 16R 0410

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

Background

1. The Subject Property is a residential parcel improved with an 811 sq. ft. ranch style residence, with a legal description of: Miller Park Overlook Lot 11 Block 1 65.6 X 112.6, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$31,000 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 \$19,400 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property was \$31,000 for tax year 2016.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner Hearing was held on September 27, 2018, at Omaha State Office Building, 1313 Farnam, Room E, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Scott W. Bloemer, Managing Member, was present at the hearing for the Taxpayer.
8. 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

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of the determination of the County Board of Equalization is de novo.²

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).

11. 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
12. 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
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
14. 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
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

16. The Taxpayer purchased the Subject Property in February of 2016, for \$21,317. At the time of the purchase the Subject Property was vacant and had been vacant for some time.
17. The Taxpayer alleged that the condition rating of the Subject Property was too high.
18. The Taxpayer stated that for the 2016 tax year the Subject Property had multiple broken windows, deteriorated siding, a dangerous and collapsing porch and porch cover; the copper plumbing had been stolen, the electrical system did not function properly, the furnace was damaged and the interior had been vandalized.
19. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with a comparable property.
20. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹
21. The Taxpayer presented the Property Record File (PRF) of properties located near the Subject Property.

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).

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

22. 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.
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 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.
24. The PRFs presented demonstrate that the differences in per square foot assessments between the Subject Property and the other properties presented for tax year 2016 were due to differences in the characteristics of the properties such as condition, style of construction, garage type and size, basement finish, fireplace, deck type and size, etc.
25. Based on the information presented, the County Appraiser indicated that the condition rating of the Subject Property should be reduced and the deck should be removed for the 2016 tax year.
26. The County Appraiser, after reviewing the information presented at the hearing, as well as the information contained in the PRF for the Subject Property, stated that his opinion of value for the Subject Property as of the assessment date would be closer to the purchase price of \$21,137.
27. The Commission finds and determines that the value of the Subject Property for tax year 2016 is \$21,137.
28. 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.
29. 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 and reversed.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2016 is: \$21,137
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 year 2016.
7. This Decision and Order is effective on January 17, 2020.

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner