

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 15R 0591 & 17R 0560

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 926 square foot ranch style residence with a legal description of: Park Lane, Lot 129 Block 0 Irreg, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$45,500 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 \$45,500 for tax year 2015.
5. The County Assessor assessed the Subject Property at \$45,500 for tax year 2017.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$39,700 for tax year 2017.
7. The County Board determined that the taxable value of the Subject Property was \$45,500 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

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2018).

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. For tax year 2015 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 a property located near the Subject Property and alleged that the Subject Property should be assessed at a per square foot amount nearer to that of this property for tax year 2015.

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).

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

22. The property presented by the Taxpayer for the 2015 assessment year is a one and one-half story property, was built in 1940, has an average quality rating, and has forced air heating. The Subject Property is a ranch, was built in 1965, has a fair quality rating, and central heating and air conditioning.
23. The Commission finds that the property presented by the Taxpayer for the 2015 appeal is not comparable to the Subject Property.
24. For tax year 2017 the Taxpayer alleged that the assessed land value was too high and that the result was that the Subject Property was assessed at a higher relative value than a comparable property on a per square foot basis.
25. The Taxpayer presented the PRF of three different properties located near the Subject Property. Two of the properties were located in different neighborhoods and had detached garages and other characteristics that make them not comparable to the Subject Property.
26. The Taxpayer alleged that the third property on Camden Avenue valued at \$35.75 per square foot was the most comparable to the Subject Property, which was assessed at \$42.14 per square foot, and that the per square foot value of the Subject Property should be equalized with the Camden Avenue property.
27. The Taxpayer notes that the Courts 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.”¹⁰
28. The County Appraiser stated that the Camden Avenue property was the most comparable to the Subject Property with the exception of the HVAC systems. The Subject Property has central heating and air conditioning, a feature that adds to its value and that the Camden Avenue property does not have. The PRF indicates that an additional \$7 per square foot is attributed to the Subject Property for the central heating and air conditioning, which accounts for the difference in the per square foot assessed values of the improvements.
29. 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*.
30. 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.
31. 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.

¹⁰ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

ORDER

IT IS ORDERED THAT:

1. The Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2015 and 2017 are affirmed.
2. The taxable value of the Subject Property for tax year 2015 is:

Land	\$ 6,500
<u>Improvements</u>	<u>\$39,000</u>
Total	\$45,500

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

Land	\$ 6,500
<u>Improvements</u>	<u>\$39,000</u>
Total	\$45,500

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

Signed and Sealed: January 17, 2020

Steven A. Keetle, Commissioner