

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Dakota County Board of Equalization,
Appellee.

Case Nos: 18R 0218

Decision and Order Affirming
County Board of Equalization

Procedural Information

1. Commission Case Nos. 18R 0218 and 18R 0219 were previously consolidated for hearing. The Commission held a hearing on July 11, 2019. On August 14, 2019, the Commission issued a Decision and Order Affirming County Board of Equalization, affirming the determinations of the Dakota County Board of Equalization (the County Board) in both appeals.
2. On September 13, 2019, Appellant filed an application for rehearing by panel of the Commission for Case No. 18R 0219 only. The Commission is required to grant this request under Neb. Rev. Stat. § 77-5005(4). However, the request did not include Case No. 18R 0218.
3. The Decision and Order Affirming County Board of Equalization issued August 14, 2019, was vacated by an Order for Rehearing and Notice of Rehearing issued October 11, 2019.
4. This Decision and Order Affirming County Board of Equalization is being issued to resolve Case No. 18R 0218.

Background

5. The Subject Property is a single family dwelling, with a legal description of: Lot 10 Block 25 First Railway Addition.
6. The Dakota County Assessor (the Assessor) assessed the Subject Property at \$55,160 for tax year 2018.
7. Scott Bloemer (the Taxpayer) protested this value to the County Board and requested an assessed value of \$35,222 for tax year 2018.
8. The County Board determined that the taxable value of the Subject Property was \$55,160 for tax year 2018.
9. The Taxpayer appealed this determination of the County Board to the Tax Equalization and Review Commission (the Commission).
10. A Single Commissioner hearing was held on July 11, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.

11. Scott Bloemer was present at the hearing.
12. Jeff Curry, the Assessor, was present for the County Board.

Applicable Law

13. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
14. The Commission's review of the determination of the County Board of Equalization is de novo.²
15. 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
16. 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
17. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
18. 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
19. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact & Conclusions of Law

20. The Taxpayer stated the Subject Property is valued in excess of market value compared to a comparable property located at 116 E 33rd street. The price per square foot of the

¹ 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 v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

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. County 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).

Subject Property is \$57.29 compared to \$36.69 of the 116 E 33rd street property (per Taxpayer's spreadsheet provided). The comparable property is the same style home and is located in the same subdivision as the Subject Property. The Taxpayer made an upward adjustment of \$4,000 to the comparable property to account for the Subject Property having one more bedroom than the comparable in an effort to make both properties equal. No evidence was provided to show \$4,000 is the correct value to adjust for an additional bedroom.

21. The Assessor stated the Taxpayer's comparable property is 119 years old as compared to the Subject Property being 68 years old. The Assessor feels more adjustments would need to be made to the comparable property to account for size difference, depreciation and age.
22. The Assessor provided four comparable properties that are all rentals with similar quality and condition ratings, square footages and age. The comparable properties have assessed price per square footage values ranging from \$59.08 to \$82.22 and sale price per square foot values ranging from \$69.21 to \$97.70; the Subject Property is currently assessed at \$57.46 per square foot. All the comparable properties would show the Subject Property is not being assessed unfairly.
23. 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 action.
24. 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.

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 2018 is affirmed.
2. The taxable value of the Subject Property for tax year 2018 is:

Total \$55,160

3. This Decision and Order, if no further action is taken, shall be certified to the Dakota County Treasurer and the Dakota 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 2018.

7. This Decision and Order is effective on October 11, 2019.

Signed and Sealed: October 11, 2019

James D. Kuhn, Commissioner