

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0297 & 19R 0522

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: The Horizon, Lot 38, Block 0, 23.10 X 68.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$41,000 for tax year 2018 and \$41,000 for tax year 2019.
3. Bel Fury Investments Group, LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$15,600 for tax year 2018 and \$34,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$41,000 for tax year 2018 and \$41,000 for tax year 2019.
5. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 21, 2020, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer, Member, were present at the hearing for the Taxpayer.
8. Kurt Skradis (the Appraiser), was present at the hearing 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 a determination of the County Board of Equalization is de novo.²
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

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).

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 stated the Subject Property has \$15,000 worth of deferred maintenance of items such as: worn roof, basement water seepage, leaky windows, undependable HVAC system, shabby interior and low water pressure. The Taxpayer stated it would not be cost effective to repair the deficiencies considering lower rental value and depressed real estate values. The Taxpayer did not provide any photo evidence of the deficiencies for the Subject Property. The Taxpayer provided a spreadsheet for each tax year with comparable properties that have been adjusted to arrive at an assessed value per square foot which then was compared to the Subject Property. No evidence was provided to show how these adjustments were arrived at other than the Taxpayer’s market knowledge obtained over years of owning properties in the Omaha market.
17. The Taxpayer provided an appraisal for a comparable property for the 2018 appeal located in the same complex as the Subject Property. The appraisal indicated a value of \$22,000 for the comparable, which has more square footage than the Subject Property and one extra bedroom. The appraisal was completed in 2016. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this

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).

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹⁰ It follows that a 2016 appraisal for a comparable property is not relevant to the 2018 or 2019 assessment of the Subject Property.

18. The Taxpayer provided one comparable property located at 2004 Florence Mills PA that has an assessment of \$35,100 for tax year 2019 whereas the Subject Property is valued at \$41,000. The Taxpayer contends this comparable is similar to the Subject Property. The comparable property has less living area square footage and a smaller wood deck which account for some of the differences in valuation.
19. The Appraiser pointed out the fact that the appraisal provided is a 2016 appraisal and wouldn't have any bearing on the 2018 and 2019 values. The Appraiser stated there are not many sales in the Subject Property's neighborhood; however, the comparable property provided by the Taxpayer for the 2019 appeal sold on April 17, 2018, for \$50,000, which the Appraiser believed was the best evidence to support the Subject Properties current valuation.
20. 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.
21. 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.

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 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 and 2019 is: **\$41,000.**
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 2018 and 2019.

¹⁰ See *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

7. This Decision and Order is effective on June 4, 2021.

Signed and Sealed: June 4, 2021

James D. Kuhn, Commissioner