

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0307

Decision and Order Reversing
County Board of Equalization

Background

1. The Subject Property is residential property, with a legal description of: Bonita Lot 12 Block 6 N 20 FT LT 11 & all LT 12.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$142,100 for tax year 2018.
3. Bel Bury Investments Group LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested a lower assessment for tax year 2018.
4. The County Board determined that the taxable value of the Subject Property was \$142,100 for tax year 2018.
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 March 18, 2021, 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. Scott W. Bloemer was present at the hearing for the Taxpayer.
8. Kurt Skradis (the 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 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 was under multiple code violations and did not have a certificate of occupancy as of January 1, 2018. The Taxpayer stated the Subject Property was a hollowed-out shell and was gutted down to the studs.
17. The Taxpayer stated work was done on the roof and siding in September of 2017 but no work was done to the interior until later in 2018.
18. The Appraiser stated an appraiser inspected the Subject Property from the exterior and found new windows, siding and roof and stated “...appears to be complete...changed to AVG Condition...” on October 5, 2017. The Appraiser stated the value was raised based on the October inspection and increased condition for 2018. The property record file provided by the Appraiser also stated in the account notes there was “new siding, roof, some new windows, new gutters” on December 17, 2014.
19. The Appraiser stated the Subject Property has a value of \$77 per square foot and all the comparable sales have a higher price per square foot. No indication was made that the comparable sales were in the same condition as the Subject Property at the time of their sales.

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).

20. The Commission finds the Subject Property was errantly assumed to be remodeled from an exterior only inspection and the value should reflect the actual state of the Subject Property as of January 1, 2018. The only evidence of value for the Subject Property in its actual condition as of January 1, 2018 would be its 2017 valuation.
21. 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.
22. 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.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is: **\$48,000.**
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 year 2018.
7. This Decision and Order is effective on November 9, 2021.

Signed and Sealed: November 9, 2021

James D. Kuhn, Commissioner