

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 18R 0310 & 19R 0535

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a residential parcel, with a legal description of: Kingswood Estates, Lot 334, Block 0, 60 X 125.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$110,300 for tax year 2018 and \$110,300 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 \$100,200 for tax year 2018 and \$89,400 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$110,300 for tax year 2018 and \$110,300 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

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).

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 stated his comparable properties are located on better situated lots yet are being valued less than the Subject Property. The Taxpayer also asserts the improvements of the Subject Property are being valued more than comparable properties. The Taxpayer provided a spreadsheet with five comparable properties with “necessary feature adjustments.” None of the adjustments have any evidence showing how the amount or percentage was arrived at.
17. The Appraiser stated the Subject Property is being valued by the same method as all the comparable properties and that the difference in age, quality, condition and components must be taken into account when comparing properties. The Appraiser stated he has not seen any evidence that homes with similar locations are selling for less.
18. The Non-Commercial Cost Detail page in the property record file (PRF) gives a value for Total Depreciation and Adjustments and then the NBHD and Quality Adjustment are

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).

factored in to give a final Improvement Value.⁹ The Subject Property was given 50.80% depreciation and a neighborhood adjustment of 1.3012 for the 2018 tax year. It was given 80% depreciation and no neighborhood adjustment for tax year 2019, which resulted in an indicated value of \$28,535 for the improvements, yet the improvements were assessed at \$90,561.

19. It appears the PRF for tax year 2019 is unreliable because the final value for the Subject Property for tax year 2019 was the same as it was for the 2018 tax year even though that value can not be duplicated by using the 2019 PRF.¹⁰
20. Although the PRF for tax year 2019 is unreliable, the Taxpayer did not provide convincing evidence of a different value for the Subject Property.
21. 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.
22. 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 year 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax years 2018 and 2019 is: \$110,300.
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.

⁹ It appears that the values shown on the Non-Commercial Cost Detail pages are rounded at some point during the computer-assisted calculation that is not shown on the documents themselves. For example, we reach a total of \$90,553 instead of \$90,561 when trying to reproduce the assessor's calculation for the 2018 value of the improvement component of the Subject Property.

¹⁰ In other words, nothing recorded in the 2019 PRF or discussed at the hearing explains how the assessor arrived at an improvement value of \$90,561 based on the values and depreciation listed on the Non-Commercial Cost Detail page. The difference between the mathematical result (\$28,535) and the improvement value eventually determined (\$90,561) is too great to be the result of a rounding error.

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

Signed and Sealed: June 4, 2021

James D. Kuhn, Commissioner