

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0312 & 19R 0512

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Miller Park Overlook Lot 11 Block 1 65.6 X 112.6.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$44,700 for tax year 2018 and \$43,500 for tax year 2019.
3. Bel Fury Investment Groups (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested a lower assessment for tax years 2018 and 2019.
4. The County Board determined that the taxable value of the Subject Property was \$44,700 for tax year 2018 and \$43,500 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 September 11, 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. Scott W. Bloemer was present at the hearing.
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 sufficient competent evidence to justify its action.”³ That presumption “remains until

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).

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 54% increase in 2018 value was excessive since he did not believe the North Omaha real estate market was increasing at that rate. The Taxpayer stated the comparable properties provided would show the disparity in valuation per square foot. The Taxpayer stated that even though the 2019 value was slightly lower he still believes the Subject Property is valued above market value.
17. The Taxpayer provided spreadsheets for 2018 and 2019 value with comparable properties to purportedly show disequalization. He also provided the property record file of one property for each year that sold in order to show homes in that area are not selling for premium prices.
18. The Taxpayer made adjustments to each of the comparable properties listed on the spreadsheet to make them as similar to the Subject Property as possible. Adjustments were made for condition, garages, bedroom number and land. The Taxpayer ended the adjustments with an assessed value per square foot. The spreadsheet showed the Subject Property was being assessed higher than the comparable properties. No evidence was provided showing how the amounts of the adjustments were arrived at, only that the Taxpayer had numerous years of knowledge of the Omaha real estate market. Without actual market data to support adjustments, the Commission finds it impossible to rely on the adjustments.

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).

19. The Appraiser stated the Taxpayer's comparable properties were all from different neighborhoods than the Subject Property. The Appraiser stated each neighborhood has different neighborhood and quality adjustments, so trying to compare homes from different neighborhoods would be difficult as they are being valued using different valuation models. The Appraiser stated he could not explain the Taxpayer's adjustments to the comparable properties.
20. The Appraiser asserted the sales comparables provided by the Taxpayer were not considered valid sales.
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.

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:

2018 - \$44,700
2019 - \$43,500
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.
7. This Decision and Order is effective on May 28, 2021.

Signed and Sealed: May 28, 2021

James D. Kuhn, Commissioner