

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No. 18R 0315

Decision and Order Affirming the Decision
of the County Board of Equalization

Case No. 20R 0570

Amended Decision and Order ~~Affirming~~
Reversing the Decision of the County Board
of Equalization

The Amended Decision and Order in Case No. 20R 0570 is being issued to correct an error in the caption. The substance of the Commission’s decision has not been modified.

Background

1. The Subject Property is a residential parcel, with a legal description of: Mount Vernon Lot 10 Block 3 56 X 112.5.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$19,400 for tax year 2018 and \$39,900 for tax year 2020.
3. Bel Fury Investments Group LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested a lower assessed value for tax years 2018 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$19,400 for tax year 2018 and \$39,900 for tax year 2020.
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 April 8, 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. Arielle Bloemer, Legal Counsel, and Scott W. Bloemer, LLC member, were 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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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 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 in need of maintenance that would cost over \$28,000, as stated in the Property Evaluation Report done June 17, 2020 by Connie Watson, a construction manager for the Taxpayer. The Taxpayer stated the hail damage to the roof was not fixed until October 2020.
17. The Appraiser stated the Subject Property was already rated “poor” which would account for all the deficiencies described by the Taxpayer. The Appraiser stated one of the comparable properties provided by the Taxpayer sold for \$21,500, which would support the 2018 valuation.

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).

18. The Taxpayer stated the Subject Property had not changed from 2018 yet the assessed value increased. The Taxpayer referenced a note in the property record file (PRF) that stated the Subject Property “seems a little improved” and the condition rating was increased to “fair.”
19. The Appraiser stated the neighborhood was reappraised for 2020. He feels the condition rating of “fair” is warranted since it is being rented out.
20. The Commission was not given evidence to prove the 2018 valuation was incorrect. However, the Commission was convinced the Subject Property had not changed from 2018 to 2020 and changing the condition rating to “fair” because “it seems a little improved” was not convincing evidence.
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 for the 2018 tax year.
22. 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 for the 2020 tax year.
23. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board for tax year 2018 was arbitrary or unreasonable and the decision of the County Board for tax year 2018 should be affirmed.
24. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board for tax year 2020 was arbitrary or unreasonable and the decision of the County Board for tax year 2020 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 affirmed.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is reversed.
3. The taxable value of the Subject Property for tax years 2018 and 2020 is: **\$19,400**
4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each Party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2018 and 2020.

8. This Decision and Order is effective on November 9, 2021.

Signed and Sealed: November 9, 2021

James D. Kuhn, Commissioner