

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0322

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

Case No: 19R 0442

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,040 square foot split entry residence, with a legal description of: Cedar Hollow Lot 6 Block 0 Irreg., Waterloo, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$113,100 for tax years 2018 and 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 \$77,800 for tax year 2018 and \$96,600 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$113,100 for tax years 2018 and 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 May 25, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer were present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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 alleged that the value of the Subject Property was negatively impacted by the condition of the property.
17. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$27,800 of repairs were needed on the Subject Property, \$21,900 in external repairs and \$5,900 for interior repairs.
18. The PER was dated June 8, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same as of both assessment dates at issue in these appeals.

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).

19. The Taxpayer presented a proposal for \$6,305.80 of repairs to the roof, gutters, and downspouts of the Subject Property dated June 18, 2020, after the PER date.
20. The County Board presented the 2018 and 2019 Property Record File (PRF) for the Subject Property and information regarding recent valid sales for each tax year.
21. The PRF for the Subject Property shows that in 2018 and 2019, it had a condition rating of fair.
22. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs in the PER and the estimate provided by the taxpayer, the condition rating of fair took into account the needed repairs indicated in the PER for the Subject Property.
23. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
24. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with comparable properties.
25. The Taxpayer notes that the Nebraska Court of Appeals held in *Scribante* that “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”⁹
26. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
27. The Taxpayer presented the PRF of properties located near the Subject Property for tax years 2018 and 2019.
28. The Taxpayer presented a chart that made adjustments to the value of the comparable properties for each tax year to adjust for differences in the characteristics of the properties. The Taxpayer stated that these adjustments were made based on his experience in the real estate market and the information contained in the PRFs. Although the Taxpayer may have knowledge of the Omaha real estate market, he is not a trained appraiser and none of the adjustments can be quantified by supporting evidence.
29. The County Appraisers stated that the Taxpayer’s comparable property for tax year 2018 would not be comparable to the Subject Property.
30. The 2018 PRF for the property presented by the Taxpayer demonstrates that the difference in the per square foot assessment is due to differences between the properties such as style, condition, enclosed solid wall porch, etc.
31. The Commission finds that the 2018 property presented by the Taxpayer is not comparable to the Subject Property.
32. The 2019 PRF for the properties presented by the Taxpayer indicate that they are all located in the same market area as the Subject Property. However, the PRFs also demonstrate that the differences in per square foot assessment between them and the

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

Subject Property were due to differences in the characteristics of the properties such as condition, age, amount and quality of basement finish, size of garage, enclosed porch, deck, etc., with one caveat: that the calculation is applied correctly.

33. The factors listed on the PRF for the Subject Property show a base cost, HVAC adjustment, total add-on value, depreciation and adjustments, and NBHD adjustment resulting in a replacement cost new less depreciation for the improvements on the Subject Property of \$89,200¹¹ rather than the \$93,100 used for the assessment of the improvements for tax year 2019.
34. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹² Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹³
35. For tax year 2019 the Taxpayer also offered the sale of a property located in the same market area as the Subject Property that sold for an amount lower than the assessed value of the Subject Property.
36. “It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”¹⁴ “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁵
37. The County Board presented a list of all valid sales in the same market area as the Subject Property. The Taxpayer’s sale property does not appear on the list of valid sales presented by the County Board.
38. The list of valid sales in the same market area does not support the allegation that the Taxpayer’s sold property represents market value.
39. The Taxpayer did not present information to demonstrate that the assessed value of the Subject Property was too high based on current sales.
40. The Commission finds that the 2019 assessed value of the Subject Property is \$109,200, consisting of \$20,000 for the land component and \$89,200 for the improvements.

¹¹ Rounded, including NHBD adjustment.

¹² *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹³ *Cabela’s, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999))

¹⁴ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁵ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

41. For tax year 2018 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.
42. For tax year 2018 the Taxpayer has not 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 affirmed.
43. For tax year 2019 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.
44. For tax year 2019 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 years 2018 is affirmed.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2019 is vacated and reversed.
3. The taxable value of the Subject Property for tax year 2018 is:

Land	\$ 20,000
<u>Improvements</u>	<u>\$ 93,100</u>
Total	\$113,100

4. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 20,000
<u>Improvements</u>	<u>\$ 89,200</u>
Total	\$109,200

5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each party is to bear its own costs in this proceeding.

8. This Decision and Order shall only be applicable to tax years 2018 and 2019.
9. This Decision and Order is effective on February 18, 2022.

Signed and Sealed: February 18, 2022

Steven A. Keetle, Commissioner