

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0329 & 19R 0496

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

Background

1. The Subject Property is a residential parcel with a legal description of: Posts Add Lot 3, Block 4 1/2 Vac Alley.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$59,000 for tax year 2018 and \$68,500 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 \$29,000 for tax year 2018 and \$28,500 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$47,600 for tax year 2018 and \$68,500 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 October 30, 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 the Subject Property is near a property that exploded on July 25, 2016. The Taxpayer stated the Subject Property sustained damage from the concussion of the explosion. The Taxpayer asserted there was damage to the windows, doors and garage door as well as the home being moved on its foundation. The Taxpayer estimated repairs would cost \$30,000 to get the house level and square on its foundation again. The Taxpayer stated that only minimal work has been done on the property due to ongoing insurance issues. The Subject Property was not rented for a period of time to install windows.
17. The Taxpayer provided three comparable properties to show comparable properties are being assessed at a lower price per square foot than the Subject Property. All three comparables are from a different neighborhood; two are of the same quality and condition and have similar components as the Subject Property. The Taxpayer provided a spreadsheet with “market adjustments” made to the properties to arrive at an adjusted assessed value per square foot for each comparable. Although the Taxpayer may have

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).

knowledge of the real estate market in Douglas County, none of the “market adjustments” were quantified with evidence showing the adjustments being made were correct.

18. The Appraiser stated there was no evidence to show the damage sustained to the Subject Property. The Subject Property is being valued at \$78.29 per square foot and one of the Taxpayer’s comparable properties recently sold for \$65,000, or \$84.64 per square foot.
19. The Appraiser asserted the 2018 value should be placed back to its original noticed value of \$59,000 because he did not agree with the County Board’s decision to lower the value.
20. Neither party 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.
21. Neither party has 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 years 2018 and 2019 are affirmed.
2. The taxable value of the Subject Property for tax year 2018 is: **\$47,600**.
3. The taxable value of the Subject Property for tax year 2019 is: **\$68,500**.
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 2019.
8. This Decision and Order is effective on September 7, 2021.

Signed and Sealed: September 7, 2021

James D. Kuhn, Commissioner