

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0332 & 19R 0501

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

Background

1. The Subject Property is a residential parcel, with a legal description of: Laurel Park Lot 1 Block 0 Irreg E 50 FT, Omaha, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$35,400 for tax year 2018 and \$35,400 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 \$17,400 for tax year 2018 and \$13,500 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$35,400 for tax year 2018 and \$35,400 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 August 12, 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 sustained damage from renters, was vacated in December of 2017, and was not available to rent again until October of 2018 due to the damage. The Taxpayer provided photos showing damage to interior walls, exterior windows and foundation.
17. The Taxpayer also asserted the Subject Property has a hail damaged roof, water intrusion in the basement, interior walls that were torn out, broken kitchen cabinets, lighting fixtures broken and plumbing salvaged for copper.
18. The Taxpayer filed suit against former tenants for the damage and was awarded \$9,475 in a September 2018 decision.
19. The County Assessor rated the condition of the Subject Property as “fair” for tax years 2018 and 2019. The Appraiser stated the condition rating of “fair” takes into consideration that the Subject Property needs much repair and has deferred maintenance. The Appraiser stated the comparable property offered by the Taxpayer for the 2018 case

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).

was a much older home, nearly 40 years older and would not be considered a good comparable.

20. The Appraiser stated he would not recommend adjusting the 2018 value because the Subject Property was rented in 2017 and would not recommend adjusting the 2019 value because the Subject Property was fixed and rented for 2019.
21. The Taxpayer provided two comparable properties that sold as evidence for the 2019 valuation. One of the comparables was not from the same neighborhood as the Subject Property and was given less weight than the second comparable, which was from the same neighborhood as the Subject Property.
22. The 4506 Laurel Ave property (4506 property) is similar to the Subject Property in style, age and quality and condition. The 4506 property has more square footage, an attached garage, and other components that make it superior to the Subject Property. It sold for \$20,000 on February 26, 2018, which is within two months of the 2018 assessment date and within eleven months of the 2019 assessment date.
23. In *Firethorn Inv. v. Lancaster Bd. of Equalization*, the Nebraska Supreme Court held that “a single sale may in some instances provide evidence of market value.”⁹ The Commission finds that the sale of a superior property of similar style, age, quality and condition, in the same neighborhood, in close proximity in time to the assessment dates, is clear and convincing evidence that the Subject Property was overvalued for both tax years at issue.
24. The sale price for the 4506 property (land and improvements) was \$21.93 per square foot of improvements. Valued at this rate, the taxable value of the Subject Property would be \$16,840.¹⁰ The taxable value of the Subject Property for tax year 2019 should be \$16,842.
25. Valuations for real property are determined as of January 1 of each tax year.¹¹ It is clear to the Commission the Subject Property was vacant and in need of repair due to tenant damage as of January 1 of the 2018 tax year, even if the property was repaired and available for rent later in that same tax year. Evidence of the judgment for \$9,475 in the Taxpayer’s favor constitutes clear and convincing evidence that the 2018 value should be lowered further to reflect the damage to the house as of the assessment date. The taxable value of the Subject Property for tax year 2018 should be \$7,367.¹²
26. 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.
27. The Taxpayer 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 vacated.

⁹ 261 Neb. 231, 240, 622 N.W.2d 605, 611 (2001).

¹⁰ $\$20,000 \div 912 \text{ square feet (4506 Laurel)} = \$21.93 \text{ per square foot. } \$21.93 \times 768 \text{ square feet (Subject)} = \$16,842.$

¹¹ Neb. Rev. Stat. § 77-1301 (Reissue 2018).

¹² $\$16,842 \text{ adjusted value} - \$9,475 \text{ damages awarded} = \$7,367.$

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is: **\$7,367**.
3. The taxable value of the Subject Property for tax year 2019 is: **\$16,842**.
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 August 20, 2021.

Signed and Sealed: August 20, 2021

James D. Kuhn, Commissioner