

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0333 & 19R 0502

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

Background

1. The Subject Property is a residential parcel improved with an 864 square foot one and one-half story residence, with a legal description of: Baker Place Lot 21 Block 5 44 X 128, Omaha, Douglas County, Nebraska
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$45,300 for tax year 2018 and \$53,200 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 an assessed value of \$22,900 for tax year 2018 and \$25,100 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$34,300 for tax year 2018 and \$53,200 for tax year 2019.
5. The Taxpayer appealed the determination 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
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

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 purchase price of the Subject Property should be determinative of its assessed value.
17. The Taxpayer purchased the Subject Property in July 2017 for \$27,000. The purchase was made at a foreclosure sale via trustee’s deed.
18. “Evidence of sale price alone may not be sufficient to overcome the presumption that the board of equalization has valued the property correctly. But where, as in this case, the evidence discloses the circumstances surrounding the sale and shows that it was an arm's length transaction between a seller who was not under the compulsion to sell and a buyer who was not compelled to buy, it should receive strong consideration.”⁹ “Pursuant to §

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).

⁹ *Dowd v. Board of Equalization*, 240 Neb. 437, 447, 482 N.W.2d 583, 589 (1992) (quoting *Potts v. Board of Equalization*, 213 Neb. 37, 47-48, 328 N.W.2d 175, 181 (1982)).

- 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.”¹⁰
19. The Taxpayer stated that the purchase price was a good indicator of market value because in the area of the Subject Property, foreclosure sales were the only market.
 20. The County Appraisers stated that the sale of the Subject Property would not be considered a valid sale for sales comparison purposes, as it was a foreclosure sale and would not reflect the market value of the Subject Property.
 21. 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, as well as a map of the 271 parcels in the Subject Property’s market area.
 22. The sales information shows that in the two-year sales window utilized by the County Assessor’s Office, there were 19 valid sales for tax year 2018 and 31 valid sales for tax year 2019, or 7% and 11% of all properties in the market area respectively.
 23. The list of valid sales in the same market area as the Subject Property does not support the allegation that the purchase price of the Subject Property represents market value.
 24. The Taxpayer did not present information to demonstrate that the assessed value of the Subject Property was too high based on current sales.
 25. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
 26. The Taxpayer presented photographs of the interior of the Subject Property which the Taxpayer stated reflected the condition of the Subject Property on each of the assessment dates at issue in these appeals.
 27. The Taxpayer presented a statement regarding deficiencies of the Subject Property including hail-damaged roof, rotten exterior trim and siding, broken windows, outdated electrical, undependable furnace, worn flooring, broken cabinetry, and basement seepage.
 28. The PRF for the Subject Property indicates that it has a condition rating of average.
 29. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable.
 30. The Taxpayer alleged that the per square foot assessed value of the Subject Property, particularly the land component, was not equalized with comparable properties for tax years 2018 and 2019.
 31. 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.”¹¹
 32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²

¹⁰ *Cabela’s, Inc. v. Cheyenne County Board of Equalization*, 8 Neb.App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

¹¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

33. The Taxpayer presented the PRF of several properties located near the Subject Property for each tax year.
34. The Taxpayer presented a chart that made adjustments to the values 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.
35. The County Appraisers stated that the Taxpayer's comparable properties are located in a different market area than the Subject Property and would not be comparable due to different market factors in each market area.
36. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.
37. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
38. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
39. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction assessed value under the court's determination in *Scribante*.
40. 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.
41. 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.

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:

Land	\$ 6,000
<u>Improvements</u>	<u>\$28,300</u>
Total	\$34,300

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

Land	\$ 6,000
<u>Improvements</u>	<u>\$47,200</u>
Total	\$53,200

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 February 18, 2022.

Signed and Sealed: February 18, 2022

Steven A. Keetle, Commissioner