

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Bel Fury Investments Group, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case Nos: 18R 0308 & 19R 0533

Decision and Order Reversing  
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Halcyon Heights Lot 13 Block 8 All Lot 12 & N 5 FT E 124.69 FT Lt 13.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$110,700 for tax year 2018 and \$143,600 for tax year 2019.
3. Bel Fury Investments Group (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$72,500 for tax year 2018 and \$78,400 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$110,700 for tax year 2018 and \$125,000 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 March 16, 2020, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Scott W. Bloemer was present at the hearing for the Taxpayer.
8. Stan Mlotek (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.<sup>1</sup>
10. The Commission’s review of the determinations of the County Board of Equalization is de novo.<sup>2</sup>
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

---

<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> 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).

sufficient competent evidence to justify its action.”<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer stated the Subject Property is over 90 years old with a dated interior, poor HVAC, outdated electrical, leaking windows, hail damaged roof and outdated plumbing that is causing some water damage. The Taxpayer added that there is no longer 500 square foot of basement finish. Water problems in the basement caused mold and deterioration to the basement finish.
17. The Taxpayer provided spreadsheets for the 2018 and 2019 tax year to show the disqualification between the Subject Property and comparable properties. The Taxpayer made “market adjustments” to each of the comparable properties to attempt to arrive at an “equalized assessed value” and a corresponding price per square foot. Although the Taxpayer may have knowledge of the local market, the adjustments being made to the comparable properties are not an acceptable appraisal method and are not USPAP compliant. The Commission is unable to quantify the adjustments being made to the comparable properties.
18. The Appraiser agreed with the Taxpayer that the value of the finished basement should be taken off the assessment value for 2018 and 2019. The Appraiser stated that the 2018

---

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> 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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

assessment should be lowered by \$14,965 and the 2019 assessment should be lowered by \$15,750 to account for the lack of finish in the basement of the Subject Property.

19. The Appraiser stated he would like to visit the Subject Property or see photos to evaluate the Taxpayer's assertion that the Subject Property is unfairly rated as Average quality and Average condition. The Appraiser did not feel the comparable properties provided by the Taxpayer were good comparables.
20. The Commission is convinced the value of the finished basement should be subtracted from the 2018 and 2019 assessment. This results in an improvement value of \$86,335 and a total value of \$95,735 for tax year 2018,<sup>9</sup> and an improvement value of \$104,250 and a total value of \$109,250 for tax year 2019.<sup>10</sup>
21. 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.
22. 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.

## 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 years 2018 and 2019 is:

<b><u>2018</u></b>	
Land	\$ 9,400
<u>Improvements</u>	<u>\$86,335</u>
Total	\$95,735

<b><u>2019</u></b>	
Land	\$ 5,000
<u>Improvements</u>	<u>\$104,250</u>
Total	\$109,250

3. 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).

---

<sup>9</sup> \$101,300 assessed improvement value - \$14,965 basement finish = \$86,335 adjusted improvement value. \$9,400 land value + \$86,335 adjusted improvement value = \$95,735 2018 assessed value.

<sup>10</sup> \$120,000 county board assessed improvement value - \$15,750 basement finish = \$104,250 adjusted improvement value. \$5,000 land value + \$104,250 adjusted improvement value = \$109,250 2019 assessed value.

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2018 and 2019.
7. This Decision and Order is effective on July 2, 2020.

Signed and Sealed: July 2, 2020

---

James D. Kuhn, Commissioner