

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0319 & 19R 0517

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Glenn Park Lot 8 Block 3 40x146.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$69,300 for tax year 2018 and \$76,000 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 \$49,500 for tax year 2018 and \$56,300 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$69,300 for tax year 2018 and \$76,000 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 1.¹
10. The Commission’s review of the 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

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).

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’s quality and condition ratings were increased to Average and Average; the Taxpayer strongly disagrees with this finding and believes the Subject Property should be rated as Fair for quality and condition.
17. The Taxpayer provided spreadsheets for the 2018 and 2019 tax year to show the disequalization 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 stated the change to the quality and condition ratings for the Subject Property were due to an inspection report as the neighborhood was reappraised in 2018 and again in 2019. The Appraiser stated that one could look at the photos of the Subject Property and the comparable properties in the provided property record files and see they are not comparable. The Appraiser stated that a majority of the comparable properties

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).

provided are not in the same neighborhood as the Subject Property and the ones that are have different quality and condition ratings, which would ultimately lead to different valuation models.

19. The Commission analyzed the comparable properties provided by the Taxpayer and found the properties that had the same quality and condition as the Subject Property were being valued at a higher price per square foot; however, they were in different neighborhoods than the Subject Property. The Commission was not convinced the Subject Property is being valued unfairly.
20. 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.
21. 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 and 2019 is:

	<u>2018</u>	
Land		\$ 8,400
<u>Improvements</u>		<u>\$60,900</u>
Total		\$69,300

	<u>2019</u>	
Land		\$ 8,400
<u>Improvements</u>		<u>\$67,600</u>
Total		\$76,000

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).
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 10, 2020.

Signed and Sealed: July 10, 2020

James D. Kuhn, Commissioner