

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0327 & 19R 0518

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Sullivans Add to So Omaha Lot 79 Block 0 LTS 78 & 79.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$76,700 for tax year 2018 and \$100,300 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 \$49,700 for tax year 2018 and \$52,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$71,200 for tax year 2018 and \$100,300 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 February 6, 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. Larry Thompsen (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 that the Subject Property is a 99 year old home with many deficiencies that would require an estimated \$35,000 to remedy. The Taxpayer stated that the increase of more than \$28,000 in one year is not justified for the Subject Property.
17. The Taxpayer provided a spreadsheet with six comparable properties showing the Subject Property is not being equalized with similar properties that are nearby for tax year 2018. The Taxpayer has applied his market adjustments to the comparable properties to arrive at a price per square foot that indicates the Subject Property is being overvalued. The use of market adjustments without any supportive documentation as to how the adjustments were determined by the Taxpayer is not an acceptable method of appraisal and does not conform to the Uniform Standards of Professional Appraisal Practice (USPAP).
18. When analyzing the Property Record Files (PRF) for the comparable properties, none of them were of the same quality and condition rating as the Subject Property (average quality, fair condition). Some of the comparable properties were of the same condition rating but were a different quality rating; the difference in quality ratings would have an effect on the assessed values and were not quantified by the Taxpayer.

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).

19. The Appraiser stated that none of the comparable properties provided by the Taxpayer are in the same neighborhood as the Subject Property and have different quality and neighborhood adjustments. The Appraiser does not consider them to be good comparable properties.
20. The Taxpayer provided a spreadsheet to illustrate a potential equalization issue as well as a valuation issue for the 2019 appeal. The Taxpayer focused on six properties that are all of fair condition rating and made his market adjustments to arrive at an equalized assessed value. As before, the use of market adjustments without any supportive documentation is not an acceptable method of appraisal and does not conform to USPAP.
21. The Taxpayer provided three comparable properties that have sold to show that the valuation of the Subject Property is in excess of its market value. One comparable that sold was from the same neighborhood as the Subject Property; it had a purchase price of \$65,000 on September 9, 2018. A second comparable listed on the Taxpayer's spreadsheet sold for \$129,000 on September 10, 2018; with such a large variance in sales prices of comparable properties, the Commission is unable to determine a consistent market value showing a different assessment for the Subject Property.
22. 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.
23. 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 years 2018 and 2019 are:

<u>2018</u>	
<u>Total</u>	<u>\$71,200</u>
 <u>2019</u>	
<u>Total</u>	<u>\$100,300</u>

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 February 28, 2020.

Signed and Sealed: February 28, 2020

James D. Kuhn, Commissioner