

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0331 & 19R 0500

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Selby Heights Lot 11 Block 0 E 50 ft 50 × 126.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$42,900 for tax years 2018 and 2019.
3. Bel Fury Investment Group LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$33,400 for tax years 2018 and 2019.
4. The County Board determined that the taxable value of the Subject Property was \$42,900 for tax years 2018 and 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 January 28, 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 Thomsen (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 his appeal for the 2018 tax year is on the grounds of valuation, whereas the appeal for the 2019 tax year is on the grounds of equalization.
17. The Taxpayer argued the Subject Property is a 57 year old home located in a “marginal” part of town with “depressed property values.” The Taxpayer stated that very little investment would go into this property; they would just keep the property “code compliant.” The Taxpayer provided one sale of a property located at 4511 N 40th that sold for \$30,000 in 2017. The Taxpayer made market adjustments to the comparable sale to find an “equalized sales value” that concluded with a \$30.13 per square foot sales value compared to the assessed value per square foot of \$38.65. There is no evidence to suggest that the Taxpayer is a licensed real property appraiser. The market adjustments were not substantiated in a way the Commission could verify and the use of one comparable sale to determine value is not consistent with professionally accepted mass appraisal methods.⁹
18. The Taxpayer provided three comparable properties that go to the issue of equalization. The Taxpayer provided a spreadsheet with the three comparable properties and the

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 The Commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. Neb. Rev. Stat. § 77-5016(6).

market adjustments made by the Taxpayer to arrive at an average assessed value of \$32.59 per square foot. Again, the market adjustments were not substantiated in a way the Commission could verify. The adjustments made to the comparable sales do not match the assessed value attributed to each of the comparable properties. Two of the comparable properties were built in 1900 or 1914. One of the comparable properties was built in 1959, which is closer to the 1961 year build of the Subject Property.

19. The Appraiser, who is a certified appraiser in Nebraska, stated his opinion that one sale makes a market; it takes more sales of similar properties to make a more definitive judgment of what a sales market is. The Appraiser stated he could not substantiate any of the adjustments made by the Taxpayer to the three comparable properties, and all the comparable properties were in a different neighborhood than the Subject Property.
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 years 2018 and 2019 is:

| | |
|---------------------|-----------------|
| Land | \$ 800 |
| <u>Improvements</u> | <u>\$42,100</u> |
| Total | \$42,900 |

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 14, 2020.

Signed and Sealed: February 14, 2020

James D. Kuhn, Commissioner