

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0340 & 19R 0485

Decision and Order Affirming
County Board of Equalization

Background

1. The Subject Property is a single family dwelling, with a legal description of: Rose Hill Lot 5 Block 10 50x130.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$65,700 for tax years 2018 and 2019.
3. Bel Fury Investments Group LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$29,200 for tax year 2018 and \$38,600 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$65,700 for tax years 2018 and 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 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 determinations 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 asserted that the Subject Property is a “marginal” rental property with a hail damaged roof, deteriorated windows, and outdated interior; the Subject Property has been kept “minimally code compliant” since it is being utilized as a “low end rental.” The Assessor is grading the quality of the Subject Property at “Fair” and a condition of “Fair” on the PRF provided by the Appraiser. The Assessor’s grading of “Fair” condition would reflect the Subject Property to have; in part, “Much repair needed. Many items need refinishing or overhauling, deferred maintenance obvious.”⁹
17. The Taxpayer provided one sale of a property located at 1616 North 61st as a comparable to the Subject Property. The Taxpayer provided a spreadsheet with the comparable property and made “Market” adjustments to show an “equalized sales value.” The spreadsheet shows the Subject Property with a \$78.97 assessed value per square foot and the comparable property having a \$35.06 sales value per square foot. The Appraiser stated that one sale does not make a market and the comparable property is built on a slab whereas the Subject Property has a basement; thus, 1616 North 61st is not a good comparable for the Subject Property.

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 Marshall and Swift, *Residential Cost Handbook*, page E6 (December 2019).

18. The Taxpayer also provided a spreadsheet with three comparable properties to show the Subject Property is not equalized with similar properties. The Taxpayer made “Market” adjustments to the comparable properties to arrive at a “assessed value per square foot.” The three comparable properties averaged \$49.18 per square foot whereas the Subject Property is assessed at \$78.97 per square foot. The three comparable properties provided for evidence of equalization are all from the same neighborhood as one another; however, they are not from the same neighborhood as the Subject Property. Although the Taxpayer may have knowledge of the local market, the adjustments being made to the comparable properties are not an accepted appraisal method and are not USPAP compliant. The Commission is unable to quantify the adjustments being made to the comparable properties as they are different than the actual assessed value of the components.
19. 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.
20. 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 Decision 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	\$ 9,200
<u>Improvements</u>	<u>\$56,500</u>
Total	\$65,700

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 26, 2020.

Signed and Sealed: February 26, 2020

James D. Kuhn, Commissioner