

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

Bel Fury Investments Group, LLC,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No. 18R 0351

Decision and Order Reversing  
County Board of Equalization

Case No. 19R 0435

Decision and Order Affirming  
County Board of Equalization

**Background**

1. The Subject Property is a single family dwelling, with a legal description of: Florence Field Lot 13 Block 37 52.4x120.
2. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$73,100 for tax year 2018 and \$87,800 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 \$20,000 for tax year 2018 and \$55,300 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$73,100 for tax year 2018 and \$87,800 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 February 21, 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.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<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).

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 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 he purchased the Subject Property on a foreclosure sale for \$11,100 in November of 2016. The previous occupant of the Subject Property filed a lawsuit preventing the Taxpayer from taking possession and the Taxpayer was granted a reduction in value for the 2017 tax year. The Taxpayer was unable to gain access to the Subject Property because of the lawsuit from the occupant and could not perform all the needed repairs to the Subject Property until summer of 2018. The Taxpayer learned after gaining possession that someone had broken into the Subject Property and shut down the furnace, causing the pipes to freeze and burst, causing much water damage to the property. The Appraiser stated he would recommend lowering the assessment of the 2018 tax year to \$20,000 in light of the information provided during the hearing.
17. The Taxpayer stated repairs had been made to the Subject Property in 2018 and were completed by January 1, 2019. The Taxpayer provided a spreadsheet of comparable properties to show that the Subject Property was not equalized with similar properties. The Taxpayer made “market adjustments” to all the comparable properties to arrive at an

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<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).

equalized assessed value. The price per square foot of the Subject Property is shown to be \$52.96 whereas the comparable properties' price per square foot averages \$37.19. Two of the comparable properties share the same rating of average quality and fair condition; the other three comparables are of superior condition. 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 compliant with the Uniform Standards of Professional Appraisal Practices (USPAP).

18. The Appraiser noted that none of the comparable properties are from the same neighborhood as the Subject Property, and he would use a different neighborhood model to value those properties. The Appraiser stated the comparables have different neighborhood and quality adjustments making it difficult to consider them truly comparable properties.
19. In Case No. 18R 0351, 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.
20. In Case No. 18R 0351, the Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.
21. In Case No. 19R 0435, 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.
22. In Case No. 19R 0435, the Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision 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 year 2018 is vacated and reversed.
2. The taxable value of the Subject Property for tax year 2018 is \$20,000.
3. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.
4. The taxable value of the Subject Property for tax year 2019 is \$87,800.
5. 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).
6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
7. Each Party is to bear its own costs in this proceeding.

8. This Decision and Order shall only be applicable to tax years 2018 and 2019.

9. This Decision and Order is effective on May 29, 2020.

Signed and Sealed: May 29, 2020

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James D. Kuhn, Commissioner