

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 19C 0477 & 20R 0567

Decision and Order Affirming the
Determinations of the Douglas
County Board of Equalization

Background

1. The Subject Property is a commercial parcel improved with a three-story office building, with a legal description of: Lands Sec-Twn-Rge 21-15-13 W 73 S 93 N 107 Ft & W 50 E 218 S 100 Ft Sub Lt 7 TL 16, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$477,700 for tax years 2019 and 2020.
3. Bel Fury Investments Group LLC (the Taxpayer) protested these values to the Douglas County Board of Equalization (the County Board) and requested assessed values of \$412,000 for tax years 2019 and 2020.
4. The County Board determined that the taxable value of the Subject Property was \$477,700 for tax year 2019 and 2020.
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 July 23, 2021, at Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer were present at the hearing for the Taxpayer.
8. Micaela Larsen with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) 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 a determination of the County Board of Equalization is de novo.²

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

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.”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

1. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property for tax years 2019 and 2020.
2. The Taxpayer presented a Property Evaluation Report (PER), prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$315,000 of repairs were needed on the Subject Property. Included with the PER were photographs of the exterior of the Subject Property showing the condition of the driveway, gutters, roof, siding and windows.
3. The Taxpayer presented partial estimates for exterior painting and restoration work.
4. The PER was dated June 24, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same on both of the assessment dates at issue in these appeals.
5. The County Board presented the 2019 and 2020 PRF for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information

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, 759 N.W.2d 464, 473 (2009).

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).

regarding the qualified sales that occurred in the economic area of the Subject Property for each of the tax years at issue.

6. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2019.
7. The PRFs for the Subject Property show that it had a condition rating of fair for tax years 2019 and 2020.
8. The County Appraiser stated that after reviewing the information presented to the Commission, including the photographs in the PER, the condition rating of fair took into account the needed repairs indicated in the PER for the Subject Property.
9. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
10. The PRFs indicate that the County Assessor's office valued the Subject Property using the income approach to valuation, which is one of the valuation methods allowed by law.⁹
11. The County Appraiser stated that there were different valuation models used depending on the use of the building (i.e. office building), quality and condition of the improvements located on a parcel.
12. The Taxpayer presented and income statement 5 years of income and expense information for the Subject Property.
13. The Taxpayer did not present the rent rolls for the Subject Property showing the rents received for which areas of the building but generally discussed the occupancy of the Subject Property and the rents received.
14. The County Appraiser presented two list of sales of commercial office buildings, one for the entire county and another for the midtown area in which the Subject Property is located. The County Appraiser stated that both sets of sales were utilized to calibrate the income model for commercial office buildings.
15. The amount of itemized expenses for the Subject Property shown on the income statement are consistent with the amount attributed to expenses in the County Assessor's model, however the income and vacancy rates submitted by the Taxpayer are significantly different.
16. "Because it is difficult for an assessor to evaluate management quality, typical income and expense figures are deemed to reflect typical management. Income flows are averaged across comparable businesses to reflect *typical* management and smoothed or *stabilized* across years to eliminate random fluctuations. In mass appraisal, expenses frequently are expressed as percentages instead of fixed amounts. They may also be analyzed and expressed on a per-unit basis."¹⁰
17. No information regarding actual income and expenses for comparable businesses or properties was presented to allow the Commission to compare to the Subject Property's income statements or to determine the reasonableness of the County Assessor's figures.

⁹ Neb. Rev. Stat. §77-112 (Reissue 2018)

¹⁰ International Association of Assessing Officers, *Fundamentals of Mass Appraisal*, at 175 (2011).

18. The Sales of commercial office buildings in the county support the income valuation model utilized by the County Assessor to determine the value of the Subject Property.
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 as 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 2019 and 2020 are affirmed.
2. The taxable value of the Subject Property for tax years 2019 and 2020 is:

Land	\$120,200
<u>Improvements</u>	<u>\$357,500</u>
Total	\$477,700

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 2019 and 2020.
7. This Decision and Order is effective on August 2, 2022.

Signed and Sealed: August 2, 2022

Steven A. Keetle, Commissioner