

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 19R 0446

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

Background

1. The Subject Property is residential parcel, with a legal description of: Brown Park Lot 10 Block 7, 50x130.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$53,200 for tax year 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 \$39,000 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$53,200 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 March 18, 2021, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer, Member, were present at the hearing for the Taxpayer.
8. Kurt Skradis (the Appraiser), was present at the hearing 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 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.”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 the Subject Property was purchased along with another property for \$87,000: \$39,000 for the Subject Property and \$48,000 for the other property. The Taxpayer asserted the Subject Property was severely damaged by a tenant before they could be evicted. This resulted in damage that needed to be fixed before the property could be rented in late 2019. Photos of the damage were provided during the hearing and the Taxpayer stated the Subject Property should be rated as poor condition, not fair as rated by the Assessor.
17. The Taxpayer stated that, aside from damage, a nearby home should be used as a comparable as evidence the assessment is too high. The Taxpayer stated the comparable property is valued at a lower price per square foot than the Subject Property even though they are similar. The Taxpayer provided a spreadsheet with “market adjustments” in an effort to equalize the two properties. Although Bloemer may have knowledge of the real estate market in the Omaha area though his many years of being in the real estate

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).

business, no evidence was provided showing how the adjustments were calculated and if they are correct.

18. The Appraiser stated the Subject Property is superior to the comparable property. The Subject Property has 800 square foot of basement and the comparable is built on a concrete slab, the Subject Property has a detached garage and the comparable has none, and the Subject Property has a solid wall porch and the comparable has none. The Appraiser stated the components of the two properties are very different and the difference accounts for a large difference in value.
19. The Taxpayer did not provide evidence of the resulting value if the condition rating of the Subject Property was lowered to “poor.” The comparable property has many differences in components that were not accounted for by the Taxpayer when attempting to equalize the two properties.
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 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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$ 6,500
<u>Improvements</u>	<u>\$46,700</u>
Total	\$53,200

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 year 2019.

7. This Decision and Order is effective on November 9, 2021.

Signed and Sealed: November 9, 2021

James D. Kuhn, Commissioner