

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 18R 0334

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

Case Nos: 19R 0504

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

Background

1. The Subject Property is a residential parcel improved with a 666 square foot ranch style residence, with a legal description of: Walnut Hill Lot 15 Block 22 50 X 150, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$73,200 for tax year 2018 and \$69,400 for tax year 2019.
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 \$27,900 for tax year 2018 and \$23,600 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$73,200 for tax year 2018 and \$69,400 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 May 25, 2021, at the Omaha State Office Building, 1313 Farnam, 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. Scott Barnes and Kurt Skradis with the Douglas County Assessor/Register of Deeds Office (the County Appraisers) were 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

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

10. The Commission's review of a 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 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 alleged that the value of the Subject Property was negatively impacted by the condition of the property.
17. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$39,650 of external repairs were needed on the Subject Property.
18. The PER was dated June 18, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same on both assessment dates at issue in these appeals.

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).

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).

19. The Taxpayer presented a 2017 insurance estimate for the repair of hail damage to the Subject Property, as well as an invoice for roof repairs that were completed in 2020, after the PER date.
20. The Taxpayer presented an invoice for \$3,153.96 for cleaning and internal repairs to Subject Property completed in 2021, after the PER date, as well as an estimate of \$15,160 for internal remodeling and repairs to the Subject Property.⁹
21. The Taxpayer alleged that the basement finish of the Subject Property had been removed prior to tax year 2018 and should not be included in the assessed value.
22. The County Board presented the 2018 and 2019 Property Record File (PRF) for the Subject Property and information regarding recent valid sales for each tax year.
23. The PRF shows that the market area in which the Subject Property is located was reappraised for tax years 2018 and 2019.
24. The PRF for the Subject Property shows that in 2018 and 2019 it had a condition rating of fair.
25. The PRF for the Subject Property for tax year 2019 does not attribute any value to basement finish while the PRF for tax year 2018 does attribute value to basement finish.
26. The County Appraisers stated that the value attributed to the Subject Property for basement finish in tax year 2018 should be removed, and that if that value were removed, their opinion of actual value for the Subject Property for tax year 2018 would be \$69,300.
27. The County Appraisers 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.
28. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
29. The Taxpayer alleged that the per square foot assessed value of the Subject Property, particularly the land component, was not equalized with comparable properties for tax years 2018 and 2019.
30. The Taxpayer notes that the Nebraska Court of Appeals held in *Scribante* that “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁰
31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
32. For tax years 2018 and 2019 the Taxpayer presented the PRF for seven properties located near the Subject Property.
33. The Taxpayer presented a chart that showed the land values for these three properties and the Subject Property for tax years 2018 and 2019.
34. The Taxpayer further argued that the per square foot value of the improvements on the

⁹ The Commission notes that some of the items included in the 2020 estimate were also part of the 2021 invoice.

¹⁰ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

Subject Property were not equalized with the improvements on the other three properties presented for tax years 2018 and 2019.

35. For tax year 2019 the Taxpayer presented the PRF of three additional properties located near the Subject Property.
36. The Taxpayer presented a chart that made adjustments to the value of these three additional comparable properties for tax year 2019 to adjust for differences in the characteristics of the properties. The Taxpayer stated that these adjustments were made based on his experience in the real estate market and the information contained in the PRFs. Although the Taxpayer may have knowledge of the Omaha real estate market, he is not a trained appraiser and none of the adjustments can be quantified by supporting evidence.
37. The County Appraisers stated that the Subject Property and all ten of the properties offered by the Taxpayer for tax years 2018 and 2019 are in different market areas and would not be comparable to the Subject Property due to different market factors in each market area.
38. The County Appraisers stated that the differences in land and improvement values between the Subject Property and the ten comparable properties presented for tax years 2018 and 2019 were based on different market factors in each market area.
39. The PRFs presented demonstrate that there are significant differences between the Subject Property and the ten properties presented for tax years 2018 and 2019 in addition to location such as style, age, quality, condition, basements, garages, porches, decks, etc.
40. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.
41. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
42. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
43. The Taxpayer has not demonstrated that the valuation of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction assessed value under the court's determination in *Scribante*.
44. The Taxpayer alleges that the action of the County Board to reduce the assessed value of the Subject Property in tax year 2020 from the prior year's assessment demonstrates that the value determined by the County Board for tax years 2018 and 2019 should be reduced similarly.
45. The assessed value for real property may be different from year to year, dependent upon the circumstances.¹² A prior year's assessment is not relevant to the subsequent year's valuation.¹³ For this reason, the Commission finds that a subsequent year's assessment is not relevant to the prior year's valuation

¹² See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹³ See *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

46. The Commission finds and determines that the assessed value of the Subject Property for tax year 2018 is \$69,300.
47. The Commission finds and determines that the assessed value of the Subject Property for tax year 2019 is \$69,400.
48. For tax year 2018 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.
49. For tax year 2018 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.
50. For tax year 2019 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.
51. For tax year 2019 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 Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2019 is affirmed.
3. The taxable value of the Subject Property for tax year 2018 is:

Land	\$13,600
<u>Improvements</u>	<u>\$55,700</u>
Total	\$69,300

4. The taxable value of the Subject Property for tax year 2019 is:

Land	\$13,600
<u>Improvements</u>	<u>\$55,800</u>
Total	\$69,400

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 February 18, 2022.

Signed and Sealed: February 18, 2022

Steven A. Keetle, Commissioner