

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case Nos: 18R 0348 & 19R 0493

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

Case No: 20R 0547

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

Background

1. The Subject Property is a residential parcel improved with a 1,160 square foot ranch style residence, with a legal description of: Ridgeview Terrace Lot 137 Block 0 S 40 Ft Lot 136 & N 35 Ft, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$142,600 for tax year 2018, \$154,400 for tax year 2019 and \$165,500 for tax year 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 \$83,700 for tax year 2019, \$85,000 for tax year 2019 and \$111,500 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$142,600 for tax year 2018, \$154,400 for tax year 2019 and \$154,400 for tax year 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 May 24, 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 alleges that the increase in the assessed value from the prior year’s assessment is excessive, unreasonable, and arbitrary.
17. The assessed value for real property may be different from year to year, dependent upon the circumstances.⁹ For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.¹⁰
18. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.

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).

⁹ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹⁰ 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).

19. The Taxpayer presented a Property Evaluation Report (PER) prepared by Margret Pistorius indicating that \$28,300 of repairs were needed on the Subject Property, \$26,800 in external repairs and \$1,500 for interior repairs.
20. The PER was dated June 20, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same on each relevant assessment date.
21. The Taxpayer presented a 2017 insurance estimate for the repair of hail damage to the Subject Property.
22. The Taxpayer presented an invoice for \$17,720.71 of repairs to the roof, gutters, downspouts, siding, and soffits of the Subject Property completed in 2020, after the PER date.
23. The Taxpayer stated that after the preparation of the PER, it was discovered that there were leaks in the basement, a sagging rear addition caused by rotting supports and a furnace at the end of its useful life.
24. The County Board presented the 2018, 2019, and 2020 Property Record File (PRF) for the Subject Property and information regarding recent valid sales for each tax year.
25. The PRF shows that the Subject Property was inspected in 2014 and 2015, and that the market area in which it is located was reappraised for tax years 2018 and 2019, with a land value review for tax year 2020.
26. The PRF for the Subject Property shows that in 2018, 2019, and 2020 it had a condition rating of fair.
27. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs in the PER, repair invoice, and Taxpayer's statement, the condition rating of fair took into account the 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 as shown on the PRF was arbitrary or unreasonable.
29. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with comparable properties.
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."¹¹
31. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹²
32. The Taxpayer presented the PRFs of properties located near the Subject Property for tax years 2018, 2019, and 2020.
33. The Taxpayer presented a chart that made adjustments to the value of the comparable properties for each tax year to adjust for differences in the characteristics of the

¹¹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹² See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

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.

34. The County Appraisers stated that all of the Taxpayer's comparable properties for tax years 2018 and 2019 are located in a different market area than the Subject Property and would not be comparable due to different market factors in each market area. The County Appraisers stated that all but one of the Taxpayer's comparable properties for tax year 2020 are located in a different market area than the Subject Property and would not be comparable due to different market factors in each market area.
35. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.
36. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
37. The Commission finds that the properties that are not in the same market area as the Subject Property are not comparable to the Subject Property.
38. The 2020 PRF for the property located in the same market area as the Subject Property demonstrates that the differences in per square foot assessments between it and the Subject Property were due to differences in the characteristics of the properties such as condition, age, amount and quality of basement finish, size of garage, enclosed porch, deck, etc.
39. The Taxpayer has not demonstrated that the valuations of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction in assessed value under the court's determination in *Scribante*.
40. For tax year 2020, the PRF shows that the County Assessor performed a land review in the market area in which the Subject Property was located, and the land valuation was increased.
41. The County Board presented the 2020 report of the Douglas County Board of Equalization regarding the Subject Property. This report indicates that the 2020 assessed value of the Subject Property was returned to the 2019 assessed value. The coordinator recommendation comments are "Protest did not receive Coordinator Review. The Board of Equalization set the propertys [sic] 2020 valuation as the same valuation set for the property in 2019."
42. The County Appraisers stated that the 2020 assessed value of \$165,500 as determined by the County Assessor prior to the County Board action was their opinion of value as of the assessment date and that that value was supported by the sales in the market area and the assessment model.
43. The County Appraisers further stated that the \$165,500 assessed value was equalized with the assessed values of other properties in the market area for tax year 2020 and that

returning the land value of the Subject Property to the prior year's value would result in dis-equalization between the Subject Property and all other parcels in the market area.

44. For tax year 2020 the parties have produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
45. For tax year 2020 the parties have 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.
46. For tax years 2018 and 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.
47. For tax years 2018 and 2019 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 Decisions of the County Board of Equalization determining the taxable value of the Subject Property for tax years 2018 and 2019 are affirmed.
2. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2020 is vacated and reversed.
3. The taxable value of the Subject Property for tax years 2018 is:

Land	\$ 7,700
<u>Improvements</u>	<u>\$134,900</u>
Total	\$142,600

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

Land	\$ 7,700
<u>Improvements</u>	<u>\$146,700</u>
Total	\$154,400

5. The taxable value of the Subject Property for tax years 2020 is:

Land	\$ 18,800
<u>Improvements</u>	<u>\$146,700</u>
Total	\$165,500

6. 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).
7. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
8. Each party is to bear its own costs in this proceeding.
9. This Decision and Order shall only be applicable to tax years 2018, 2019 and 2020.
10. This Decision and Order is effective on February 18, 2022.

Signed and Sealed: February 18, 2022

Steven A. Keetle, Commissioner