

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

BEL FURY INVESTMENTS
GROUP LLC
APPELLANT,

CASE NOS: 19R 0532 & 20R
0582

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION

I. BACKGROUND

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 2321070000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$88,300 for tax year 2019 and \$108,800 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).
4. The County Board determined that the taxable value of the Subject Property was \$88,300 for tax year 2019 and \$88,300 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 September 28, 2021, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.

7. Arielle Bloemer, legal counsel, and Scott Bloemer were present at the hearing for the Taxpayer.
8. Scott Barnes and Kurt Skradis with the County Assessor's Office (County Appraisers) were present for the County Board.

II. 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
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

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

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, 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.* at 283-84.

- 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

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a ranch style residence constructed in 1953.
17. The Taxpayer alleges that the increase in the assessed value from the 2018 tax year's assessment is excessive, unreasonable, and arbitrary.
18. 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
19. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property in tax year 2019 and 2020.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (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).

20. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$32,200 of repairs were needed on the Subject Property. Included with the PER were photographs of the Subject Property showing the condition of the driveway, deck, exterior doors, foundation, gutters, roof, siding, windows, and flooring.
21. The PER was dated 19 June, 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.
22. The Taxpayer presented a 2017 insurance estimate for the repair of hail damage to the Subject Property. The Taxpayer stated that the roof had not been repaired as of the assessment dates at issue.
23. 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 regarding the qualified sales that occurred in the economic area of the Subject Property for each of the tax years at issue. This information was used to determine the value attributed to each of the characteristics of residential properties in the area, including the Subject Property.
24. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2019.
25. The PRF for the Subject Property shows that it had a condition rating of fair for tax year 2019 and 2020.
26. 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.
27. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.

28. The Taxpayer alleged that for the 2019 tax year the per square foot assessed value of the Subject Property was not equalized with comparable properties.¹¹
29. 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.”¹²
30. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹³
31. The Taxpayer presented the 2019 PRF for two properties located within one half mile of the Subject Property.
32. The Taxpayer presented a chart that made adjustments to the value of these two 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.
33. The County Appraisers stated that the Subject Property was a ranch style property of average quality of construction while the properties offered by the taxpayer were one and one-half story properties of fair quality of construction and therefore would not be comparable to the Subject Property due to different cost factors and characteristics.
34. The PRFs presented demonstrate that there are significant differences between the Subject Property and the two properties presented including style of construction, quality of construction,

¹¹ The Taxpayer did not make this allegation for the 2020 tax year.

¹² *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹³ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

- age, garages, decks, etc.
35. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
 36. 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*.
 37. For tax year 2020 the Taxpayer alleges that the assessed value of the Subject Property should be reduced because the referee recommended a lower value but that this recommendation did not receive a review by a coordinator or the County Board for tax year 2020 and its value was simply rolled back to the 2019 value.
 38. The referee recommendation for a lower value indicated that it was based on recent sales and a computer-generated market analysis. The computer-generated market analysis was not presented to the Commission.
 39. The only sales for the 2020 assessment year presented were the validated sales list presented by the County Board which support the County Assessor's valuation of \$108,800 for tax year 2020.
 40. The information presented to the Commission demonstrated that other property values were rolled back to the 2019 value in the same manner as the Subject Property.
 41. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁴ Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.¹⁵
 42. If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that the

¹⁴ *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

¹⁵ *Cabela's, Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999) (citing *Scribante v. Douglas Cty. Bd. of Equal.*, 8 Neb.App. 25, 588 N.W.2d 190 (1999)).

valuation placed on his [or her] property when compared with valuations placed on other similar properties is grossly excessive and is the result of systematic exercise of intentional will or failure of plain legal duty, and not mere errors of judgment.”¹⁶ “There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”¹⁷

43. “By adjudicating tax protests in greatly disparate amounts...the Board failed to fulfill its ‘plain duty’ to equalize property valuations.”¹⁸
44. Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.¹⁹
45. For tax year 2020 the equalized value of the Subject Property is the same as the 2019 value of \$88,300.
46. 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.
47. For tax year 2020 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.
48. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board are arbitrary or unreasonable for tax years 2019 or 2020 and the decisions of the County Board should be affirmed.

¹⁶ *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

¹⁷ *Id.* at 673, 94 N.W.2d at 50.

¹⁸ *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

¹⁹ *Equitable Life v. Lincoln County Bd. of Equal.*, 229 Neb. 60, 425 N.W.2d 320 (1988); *Fremont Plaza v. Dodge County Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987)

IV. 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	\$10,500
<u>Improvements</u>	<u>\$77,800</u>
Total	\$88,300

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 March 29, 2023.

Signed and Sealed: March 29, 2023



Steven A. Keetle, Commissioner