

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

BEL FURY INVESTMENTS
GROUP LLC
APPELLANT,

CASE NOS: 19R 0537 &
20R 0575

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

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

I. BACKGROUND

1. The Subject Property consists of an improved residential parcel in Douglas County, parcel number 1605960000.¹
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$26,800 for tax year 2019 and \$75,400 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 \$26,800 for tax year 2019 and \$75,400 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 September 29, 2021, at Omaha State Office Building, 1313 Farnam Street,

¹ As of the date of the hearing parcel number 1605960000 no longer existed, parcel number 1605960000 was combined with another adjacent parcel 16055950000 in September of 2020 after the assessment date to become 1605960002.

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 1.²
10. The Commission's review of a determination of the County Board of Equalization is de novo.³
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."⁴ 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."⁵
12. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the

² Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

³ 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).

⁴ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁵ *Id.* at 283-84.

- order, decision, determination, or action was unreasonable or arbitrary.⁶
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷
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.⁸
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁹

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is improved with a ranch style residence constructed in 1964.
17. The Taxpayer alleges that the increase in the assessed value from the prior 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.¹⁰ For this reason, a prior year's assessment is not relevant to the subsequent year's valuation.¹¹
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.

⁶ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁸ *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).

⁹ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁰ See *Affiliated Foods Coop. v. Madison Co. Bd. of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

¹¹ 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 photographs of the Subject Property showing the condition of the garage door, trim, siding, interior door trim, kitchen appliances, light fixtures, drywall, carpet, and basement finish. The Taxpayer stated that the photographs reflected the condition of the Subject Property on both assessment dates at issue in these appeals.
21. 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.
22. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2020. The County Appraisers stated that the last reappraisal for the market area in which the Subject Property was located was done in 2013, although reviews and adjustments had been done between the 2013 and 2020 reappraisals.
23. The PRF for the Subject Property shows that it had a condition rating of average for tax year 2019 and a condition rating of fair for tax year 2020.
24. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs, the condition rating of average took into account the condition of the Subject Property shown in the photographs. The County Appraisers further stated that the determination of fair condition made as part of the 2020 re-appraisal would have been based on more information that was contained in the PRF and photographs presented.
25. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property in tax year 2019 was arbitrary or unreasonable. The Taxpayer has

not presented information to demonstrate that the condition rating of fair for the Subject Property in tax year 2020 was arbitrary or unreasonable.

26. 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.¹²
27. 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.”¹³
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁴
29. The Taxpayer presented the 2019 PRF for three properties located within one half mile of the Subject Property.
30. 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.
31. The PRFs presented demonstrate that there are significant differences between the Subject Property and the three properties presented including quality of construction, basements, age, garages, decks, porches, etc.
32. The differences in per square foot value between the Subject Property and the three properties presented by the Taxpayer are

¹² The Taxpayer did not argue this issue before the Commission for the 2020 tax year valuation.

¹³ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁴ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

attributable to the differences in characteristics between the properties.

33. 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*.
34. The Taxpayer alleged that the land value should be lower when combined with the lot behind the Subject Property.
35. The PRF indicates that the Subject Property was combined with another parcel. However, this combining of parcels did not take place until after the 2020 assessment date, and the valuation of the parcel that was combined with the Subject Property was not appealed.
36. 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.
37. 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.

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 is:

Land	\$ 700
<u>Improvements</u>	<u>\$26,100</u>
Total	\$26,800

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

Land	\$ 6,600
<u>Improvements</u>	<u>\$68,800</u>
Total	\$75,400

4. 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).
5. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
6. Each party is to bear its own costs in this proceeding.
7. This Decision and Order shall only be applicable to tax years 2019 and 2020.
8. This Decision and Order is effective on March 29, 2023.

Signed and Sealed: March 29, 2023



Steven A. Keetle, Commissioner