

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

BEL FURY INVESTMENT  
GROUP LLC  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 20R 0551

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

**I. BACKGROUND**

1. The Subject Property is an improved residential parcel in Douglas County, parcel number 1601395074.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$191,800 for tax year 2020.
3. Bel Fury Investment Group LLC (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$177,500 for tax year 2020.
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 November 1, 2021, at Omaha State Office Building, 1313 Farnam, 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.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
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."<sup>3</sup> 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."<sup>4</sup>
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.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> 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).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

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.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a residential parcel improved with a 1,782 square foot tri-level style residence.
17. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
18. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$12,000 of exterior repairs were needed on the Subject Property. Included with the PER were photographs of the Subject Property showing the condition of the driveway, fence, chimney, foundation, and siding.
19. The PER was dated 20 June 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same on the assessment date at issue in this appeal.
20. 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 date.
21. The Taxpayer also presented a bid for siding work to be done on Subject Property in September of 2021. The Taxpayer has not had the siding repaired as of the assessment date at issue in this appeal.

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<sup>7</sup> *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).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

22. The County Board presented the 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.
23. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2020.
24. The PRF for the Subject Property shows that it had a condition rating of average.
25. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs in the PER, the condition rating of average took into account the needed repairs indicated in the PER for the Subject Property.
26. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable.
27. The Taxpayer alleges that the assessed value of the Subject Property should be reduced due to its proximity to high voltage power lines.
28. The County Board presented a map of the Subject Property's market area which shows that it is adjacent to a high voltage power line right of way.
29. The Taxpayer did not present any sales or other information that would allow the Commission to quantify any impact the Subject Property's proximity to a high voltage power line right of way would have on its value.
30. The County Appraisers stated that their opinion of value for the Subject Property for tax year 2020 was \$191,800 as initially set by the County Assessor's office.

31. The County Appraisers alleged that the assessed value of the Subject Property should be set at the value of \$191,800 initially set by the County Appraiser before County Board action because the Subject Property 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
32. The County Board Summary Form for 2020 indicates that the referee who heard the protest of the Subject Property's assessed value 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.
33. 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.
34. 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 \$191,800 for tax year 2020.
35. 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.
36. 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.<sup>9</sup> Equalization is the process of ensuring that all taxable property is placed on the assessment rolls at a uniform percentage of its actual value.<sup>10</sup>
37. If taxable values are to be equalized it is necessary for a Taxpayer to establish by "clear and convincing evidence that the valuation placed on his [or her] property when compared with

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<sup>9</sup> *Banner County v. State Board of Equalization*, 226 Neb. 236, 411 N.W.2d 35 (1987).

<sup>10</sup> *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)).

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.”<sup>11</sup>  
“There must be something more, something which in effect amounts to an intentional violation of the essential principle of practical uniformity.”<sup>12</sup>

38. “By adjudicating tax protests in greatly disparate amounts...the Board failed to fulfill its ‘plain duty’ to equalize property valuations.”<sup>13</sup>
39. 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.<sup>14</sup>
40. For tax year 2020 the equalized value of the Subject Property is the same as the 2019 value of \$177,500.
41. 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.
42. 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.

#### **IV. 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 2020 is affirmed.

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<sup>11</sup> *Newman v. County of Dawson*, 167 Neb. 666, 670, 94 N.W.2d 47, 49-50 (1959) (Citations omitted).

<sup>12</sup> *Id.* at 673, 94 N.W.2d at 50.

<sup>13</sup> *Zabawa v. Douglas County Bd. of Equalization*, 17 Neb.App. 221, 228, 757 N.W.2d 522, 528 (2008).

<sup>14</sup> *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)

2. The taxable value of the Subject Property for tax year 2020 is:

|                     |                  |
|---------------------|------------------|
| Land                | \$ 16,500        |
| <u>Improvements</u> | <u>\$161,000</u> |
| Total               | \$177,500        |

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 2020.
7. This Decision and Order is effective on March 31, 2023.

Signed and Sealed: March 31, 2023



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Steven A. Keetle, Commissioner