

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

BEL FURY INVESTMENT
GROUP LLC
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20R 0552

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 2245150632.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$170,900 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 \$170,900 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 1.¹
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 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

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.

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).

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 residential parcel improved with a 1,914 square foot townhouse.
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 \$21,350 of repairs were needed on the Subject Property. Included with the PER were photographs of the Subject Property showing the condition of the driveway, privacy fence, A/C, flooring, ceilings, inside of garage door, and interior paint.
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 these appeals.
20. 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. The condition of the roof was not addressed in the PER.
21. 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

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).

that occurred in the economic area of the Subject Property for the tax year 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 for the Subject Property shows that it had a condition rating of average.
23. The Taxpayer alleged that the condition rating of the Subject Property was arbitrarily changed from fair the previous year to average in the current year even though the actual condition hadn't significantly changed from the prior assessment year.
24. The County Appraisers stated that a review of the condition rating of the Subject Property as well as the condition of the other properties in the market area was made and it was determined that the condition of the Subject Property was actually average rather than fair.
25. The County Appraisers stated that the valuation determination of \$170,900 was made using the assessment model developed in 2017 and condition rating of fair for the Subject Property and carried forward for each year through the 2020 assessment year.
26. 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, but that the current assessed value of the Subject Property reflected a condition rating of fair.
27. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable.
28. The County Board did not present a 2020 value for the Subject Property that reflected a condition rating of average.
29. Further the County Board did not provide notice of a higher taxable value and the intent to offer proof in its support as required.⁹

⁹ See, Title 442 Neb. Admin. Code. ch. 5 §016.02A (6/21)

30. The Taxpayer alleges that the assessed value of the Subject Property should be reduced due to its proximity to the interstate.
31. The County Board presented a map of the Subject Property's market area which shows that it is located one or two lots away from interstate I-680 right of way.
32. 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 the interstate would have on its value.
33. 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.
34. 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.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 20,600
<u>Improvements</u>	<u>\$150,300</u>
Total	\$170,900
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



Steven A. Keetle, Commissioner