

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

BEL FURY INVESTMENT
GROUP LLC,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 20R 0554

DECISION AND ORDER
REVERSING 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 2248740002.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$99,900 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 \$100,300 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 16, 2022, 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 (the 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

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).

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 residential parcel improved with a 1,228 square foot one and one-half story residence constructed in 1919. The Subject Property has a quality rating of average and a condition rating of fair.
17. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
18. The County Board presented a Property Evaluation Report (PER) prepared for the Taxpayer by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$17,000 of repairs were needed on the Subject Property. Included with the PER were photographs of the Subject Property showing the condition of the sidewalks, front porch, roof, siding, and windows.
19. The Taxpayer presented photographs of interior plaster walls and ceilings, handrails and stairs that were not included in the PER and whose cost of repairs was not included in the PER

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).

20. The PER was dated 10 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.
21. 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 to be completed in 2022, after the PER date and assessment date.
22. The Taxpayer presented an invoice for the replacement of the siding, insulation, fascia, soffits and wrap of the windows in 2021 after the PER date and assessment date.
23. 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.
24. The PRF shows that the County Assessor's office determined that the assessed value of the Subject Property was \$99,900 for tax year 2020, but that the County Board returned the assessed value to the previous tax years value without review.
25. There is no evidence before the Commission to support a 2020 valuation of \$100,300 for the Subject Property.
26. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2020.
27. The PRF for the Subject Property shows that it had a condition rating of fair.
28. The County Appraisers stated that after reviewing the information presented to the Commission, including the photographs and PER, the condition rating of fair accounted for the needed repairs indicated in the PER and invoices for the Subject Property.

29. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
30. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with comparable properties.
31. 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.”⁹
32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
33. The Taxpayer presented the PRF for six properties located within one half mile of the Subject Property.
34. The Taxpayer presented a chart that made adjustments to the value of these five additional comparable properties for tax year 2020 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.
35. The County Appraisers stated that all of the properties presented by the Taxpayer are located in different market areas than the Subject Property and therefore would not be comparable to the Subject Property due to different market factors in each market area.
36. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

37. The County Appraisers discussed the qualified sales that occurred in the economic area of the Subject Property for each of the tax years at issue in the Subject Property's market area and presented the assessment statistics to support the market area adjustments made to the valuation of the Subject Property.
38. The Taxpayer did not present sales information to support the allegation that the difference in market area adjustments between the Subject Property and the other properties presented are arbitrary or unreasonable.
39. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
40. 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*.
41. The Commission finds that the value of the Subject Property for tax year 2020 is \$99,900.
42. 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.
43. The Taxpayer has 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.

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 vacated and reversed.

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

Land	\$ 7,000
<u>Improvements</u>	<u>\$92,900</u>
Total	\$99,900

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 November 15, 2023.

Signed and Sealed: November 15, 2023



Steven A. Keetle, Commissioner