

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

BEL FURY INVESTMENTS  
GROUP LLC,  
APPELLANT,

V.

DOUGLAS COUNTY BOARD  
OF EQUALIZATION,  
APPELLEE.

CASE NO: 20R 0564

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 1711670000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$91,800 for tax year 2020.
3. Bel Fury Investments 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 \$91,800 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.<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>

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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).

13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
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 1,092 square foot ranch style residence constructed in 1910. The Subject Property has a quality and 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 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 or replaced by the 2020 assessment date.
19. The County Board presented the Property Record File (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 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.

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<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).

<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).

20. The PRF for the Subject Property shows that it had a condition rating of fair.
21. The Taxpayer has not presented information to demonstrate that the condition rating of fair for the Subject Property was arbitrary or unreasonable.
22. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with comparable properties.
23. 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.”<sup>9</sup>
24. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
25. The Taxpayer presented the PRF for five properties located within one half mile of the Subject Property.
26. 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.
27. The County Appraisers stated that three of the five 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.

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

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

28. The Commission finds that these three properties presented by the Taxpayer that are located in a different market area are not comparable to the Subject Property.
29. The Taxpayer alleges that the market areas determined by the County Assessor are arbitrary or unreasonable.
30. 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.
31. 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.
32. The Taxpayer did not present information to demonstrate that the market areas utilized by the County Assessor are arbitrary or unreasonable.
33. The remaining two properties presented by the Taxpayer are in the same market area and of the same quality of construction as the Subject Property.
34. The County Appraisers stated that the difference in per square foot values between the Subject Property and the two properties located in the same market area presented by the Taxpayer were due to differences in condition and age.
35. The PRFs presented show that differences such as type of siding, condition, basement finish, garages, decks, and porches account for differences in the per square foot values of these properties with one exception, the value of the land component.
36. The PRF for the Subject Property and the other properties in the same market area shows that the value of the land components were uniform and proportionate for tax year 2017 with the Subject Property and one other having the same land component value of \$4,800. For tax year 2020 the value of the land component of the Subject Property and one other increased

- while the other \$4,800 land component value stayed the same.
37. The Taxpayer has 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*.
  38. "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>11</sup>
  39. The Taxpayer has shown that the land component of the Subject Property has not been valued uniformly and proportionately.
  40. The Commission finds that the value of the land component of the Subject Property for tax year 2020 is \$4,800, which when combined with the improvement value of \$79,400, results in a total assessed value of \$84,200.
  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 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                | \$ 4,800        |
| <u>Improvements</u> | <u>\$79,400</u> |
| Total               | \$84,200        |

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<sup>11</sup> *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

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



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Steven A. Keetle, Commissioner