

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

BEL FURY INVESTMENTS
GROUP LLC,
APPELLANT,

CASE NOS: 20R 0569, 21R
1046

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

DECISION AND ORDER
REVERSING 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 937800000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$74,500 for tax year 2020 and \$68,400 for tax year 2021.
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 \$78,100 for tax year 2020 and \$68,400 for tax year 2021.
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 November 14, 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 900 square foot one and one-half story residence constructed in 1900. The Subject Property has a quality and condition rating of average.
17. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
18. The Taxpayer discussed the condition of the interior and exterior of the Subject Property and presented photographs of the concrete and sidewalks, exterior stairs, siding, windows, roof, enclosed porch, interior plaster, kitchen, basement, bathroom, living room, and upstairs bedroom.
19. The Taxpayer presented an invoice for roof replacement that took place in 2022, after the assessment date.
20. The Taxpayer presented a 2022 estimate for work to be done on the exterior concrete and steps, doors, gutters, window trim painting and replacement, siding, and foundation issues.
21. The County Board presented the 2020 and 2021 Property Record Files (PRF) for the Subject Property. The PRF contains

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).

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 notes indicate that the condition rating should have been fair for tax year 2020.
23. The Taxpayer has demonstrated that the Subject Property's condition was not average for tax year 2020 and 2021.
24. The condition rating of the property is fair for tax years 2020 and 2021.
25. The County Appraisers after reviewing the information presented at the hearing stated that their opinion of value for the Subject Property in tax year 2020 was \$68,400.
26. The Taxpayer agreed that the value of the Subject Property for tax year 2020 was \$68,400.
27. The Commission finds that the value of the Subject Property for tax year 2020 is \$68,400.
28. The Taxpayer Presented the PRF for several one and one-half story properties in the same market area as the Subject Property that have a condition rating of fair.
29. Based on the information presented the Commission finds that the physical depreciation applied to the Subject Property should be increased to 65.05% to account for its condition resulting in a value for the improvements of \$45,200.⁹
30. The Commission finds that the value of the Subject Property for tax year 2021 is \$52,700, with \$45,200 for the improvements and \$7,500 for the land component.
31. 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.

⁹ \$160,962 (RCN) x 65.05% physical depreciation = \$56,257 x .8032 NBHD adjustment = \$45,200 (rounded)

32. The Taxpayer has 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 vacated.

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 2020 and 2021 are vacated and reversed.
2. The taxable value of the Subject Property for tax year 2020 is:

Land	\$ 7,500
<u>Improvements</u>	<u>\$60,900</u>
Total	\$68,400

3. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 7,500
<u>Improvements</u>	<u>\$45,200</u>
Total	\$52,700

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 2020 and 2021.
8. This Decision and Order is effective on November 1, 2023.

Signed and Sealed: November 1, 2023



Steven A. Keetle, Commissioner