

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

BEL FURY INVESTMENT
GROUP LLC,
APPELLANT,

V.

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

CASE NO: 21R 1026

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 0717350000.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$177,300 for tax year 2021.
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 \$177,300 for tax year 2021.
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 January 11, 2023, at the 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 one and one-half story residence constructed in 1919. The Subject Property has a quality rating of good and a 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 provided photographs of the Subject Property showing the condition of the foundation, front steps, siding, deck, porch door, fence, basement, and furnace. The Taxpayer stated that the photographs showed the condition of the Subject Property as of the assessment date.
19. The Taxpayer presented a 2017 insurance estimate of \$9,274.28 for the repair of hail damage to the roof and gutters of the Subject Property. The roof and gutters had not been repaired as of the assessment date.
20. 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

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).

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.

21. The PRF shows that the market area in which the Subject Property is located was reappraised for tax year 2021.
22. The PRF for the Subject Property shows that it had a condition rating of average.
23. The County Appraisers stated that after reviewing all of the information presented to the Commission, including the photographs and estimates, the condition rating of average accounted for the needed repairs indicated for the Subject Property.
24. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property for tax year 2021 was arbitrary or unreasonable.
25. The Taxpayer alleged that the per square foot assessed value of both the land component and the improvement component of the Subject Property were not equalized with comparable properties.
26. 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
27. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
28. The Taxpayer presented the PRF for five properties located within one half mile of the Subject Property as land value comparables.
29. The Taxpayer presented a chart that showed the assessed value

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)

and per square foot value of the land component of the Subject Property and these five additional properties.

30. The County Appraisers stated that these five properties presented as land value comparables were all located in different market areas than the Subject Property and therefore would not be comparable to the Subject Property due to differences in market factors in each market area that required different land valuation models.
31. The Taxpayer did not present sales information to support the allegation that the difference in land values between the market area of 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 Taxpayer presented the PRF for six properties located within one half mile of the Subject Property as improvement value comparables. These six properties include the same five properties used for land value comparables and one other property that was located in the same market area as the Subject Property.
34. The Taxpayer presented a chart that made adjustments to the value of these six comparable properties 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 PRFs presented show that the Subject Property has the highest quality of construction rating of all of the properties presented, and that this, in addition to the differences in land values and market adjustments due to the different market area's accounts for the difference in assessed values between the

Subject Property and the other properties presented.

36. The Taxpayer argued that the quality of construction rating for the property located in the same market area as the Subject Property was incorrect.
37. The Taxpayer did not present information showing the characteristics of the other property located in the same market area as the Subject Property which would relate to the quality of construction rating of this property.
38. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
39. 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*.
40. 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.
41. The Taxpayer has not 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 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 2021 is affirmed.
2. The taxable value of the Subject Property for tax year 2021 is:

Land	\$ 51,100
<u>Improvements</u>	<u>\$126,200</u>
Total	\$177,300

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 2021.
7. This Decision and Order is effective on December 13, 2023.

Signed and Sealed: December 13, 2023



Steven A. Keetle, Commissioner