

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

Bel Fury Investments Group LLC,  
Appellant,

v.

Sarpy County Board of Equalization,  
Appellee.

Case No: 19R 0309

Decision and Order Affirming the  
Determination of the Sarpy  
County Board of Equalization

**Background**

1. The Subject Property is a residential parcel improved with a 792 square foot ranch style residence, with a legal description of: Lot 7 Block 10 High Meadows, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$77,659 for tax year 2019.
3. The Taxpayer protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$69,335 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$77,659 for tax year 2019.
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 August 16, 2021, at the Omaha State Office Building, 1313 Farnam, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Arielle Bloemer, legal counsel, and Scott W. Bloemer were present at the hearing for the Taxpayer.
8. Andrea Gosnold-Parker, Deputy Sarpy County Attorney, and Larry Houlten, Shane Grow and Jameson McShane, with the Sarpy County Assessors Office (County Appraisers) were present for the County Board.

**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>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<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

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>
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>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
17. The Taxpayer presented a Property Evaluation Report (PER), prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$32,000 of repairs were needed on the Subject Property. Included with the PER were photographs of the exterior of the Subject Property showing the condition of the driveway, deck, exterior door, foundation, roof and gutters, siding and windows. There were no needed repairs or photographs of the interior of the Subject Property.
18. The PER was dated June 12, 2020, but the Taxpayer stated that the condition of the Subject Property as described in the PER was the same on the assessment dates at issue in this appeal.

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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.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

19. The Taxpayer argued that the value of the Subject Property should be reduced by the costs to repair and replace the items in the PER or that the condition rating of the Subject Property should be lowered.
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.
21. The County Board also presented photographs of the exterior of the Subject Property showing a new roof as well as several interior photographs.
22. The PRF shows that the Subject Property has a condition rating of average.
23. The PRF also indicates that the Subject Property is receiving a lump sum adjustment that lowers its assessed value. The County Appraiser stated that the lump sum adjustment was applied to account for the cost to cure the necessary driveway and roof repairs.
24. The County Appraisers discussed the interior and exterior inspections of the Subject Property 2013, 2015 and 2016. The County Appraisers noted that the roof on the residence had been replaced sometime in 2016, but that the garage roof had not been replaced at that time. The County Appraisers indicated that the overall condition Subject Property along with the lump sum adjustments accounted for the overall condition rating of average.
25. The Taxpayer has not presented information to demonstrate that the condition rating of average with cost to cure adjustment for the Subject Property was arbitrary or unreasonable.
26. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with other comparable properties.
27. 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>
28. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>10</sup>
29. For tax year 2019 the Taxpayer presented the PRF for four properties located near the Subject Property.
30. The properties presented by the Taxpayer all have a lower condition rating than the Subject Property. The PRFs presented by the Taxpayer demonstrate that the differences in the assessed values between the Subject Property and the four properties presented are due to this difference in condition, and to a lesser extent the differences in characteristics such as garage size and other minor differences.
31. The County Board presented a listing of all valid sales in the neighborhood of the Subject Property, a listing of all assessed values of residential properties in the same market area as the Subject Property.

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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)

32. The County Board presented the PRF for five one story properties located near the Subject Property that had the same quality rating as the Subject Property two of which had the same condition rating and three that had higher condition ratings that sold near the assessment along with the real estate transfer documents for these sales.
33. The County Board presented the PRF for five other one story properties located near the Subject Property that had the same quality and condition rating and characteristics of the Subject Property to show uniform assessment methodology was applied by the County.
34. 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*.
35. 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.
36. 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.

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 2019 is affirmed.
2. The taxable value of the Subject Property for tax year 2019 is:

Land	\$16,000
<u>Improvements</u>	<u>\$61,659</u>
Total	\$77,659

3. This Decision and Order, if no further action is taken, shall be certified to the Sarpy County Treasurer and the Sarpy 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 2019.
7. This Decision and Order is effective on September 23, 2022.

Signed and Sealed: September 23, 2022

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Steven A. Keetle, Commissioner