

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 19R 0310

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

Background

1. The Subject Property is a residential parcel improved with a 1,051 square foot one-story residence, with a legal description of: Tax Lot 18E 1-13-13 (.16 AC), Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$113,028 for tax year 2019.
3. Bel Fury Investments Group LLC (the Taxpayer) protested this value to the Sarpy County Board of Equalization (the County Board) and requested an assessed value of \$103,824 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$113,028 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 17, 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 and Shane Grow 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 1.¹

¹ Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

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
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

Findings of Fact & Conclusions of Law

1. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property.
2. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$10,450 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 doors, foundation, gutters, roof, siding, and windows as well as photographs of the interior of the Subject Property showing the bathroom flooring, garage drywall, and vent covers.

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.*

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

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

⁷ 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).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

3. 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 both of the assessment dates at issue in these appeals.
4. 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.
5. The County Board presented Property Record File (PRF) for the Subject Property. The PRFs contains information about the characteristics of the Subject Property.
6. The County Board also presented photographs of the interior and exterior of the Subject Property taken at various dates from 2009 to 2021.
7. The PRF shows that the Subject Property has a condition rating of average.
8. The County Appraisers stated that the property was inspected twice after the appeal was filed and based on that inspection the number of plumbing fixtures should be reduced and the assessed value adjusted accordingly.
9. The County Board presented a narrative from the Sarpy County Real Estate Appraiser that inspected the Subject Property and a revised PRF showing the revised and recommended valuation of \$112,402, with \$18,000 allocated to the land value and \$94,402 to the improvements for tax year 2019.
10. The Taxpayer has not presented information to demonstrate that the condition rating of average for the Subject Property was arbitrary or unreasonable.
11. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with other comparable properties for tax year 2019.
12. 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
13. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
14. For tax year 2019 the Taxpayer presented the PRF for two properties located near the Subject Property.
15. The Taxpayer presented the PRF for two properties that were alleged to be comparable to the Subject Property, one of which sold in July of 2016.
16. The properties presented by the Taxpayer for both have a lower quality ratings than the Subject Property, and one of them is constructed on a concrete slab rather than a basement. The County Appraisers stated that the properties offered by the Taxpayer would not be comparable to the Subject Property due to differences in condition and other characteristics, such as lack of basement.
17. 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

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)

as the Subject Property.

18. The County Board presented the 2019 PRF for three one story properties located near the Subject Property that had the same quality and condition rating as the Subject Property that sold near the assessment date along with the real estate transfer documents for these sales.
19. The Commission finds that the sales price of the sold property presented by the Taxpayer is not an indicator of market value or representative of the actual value of the Subject Property.
20. The County Board presented the 2019 PRF for three 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.
21. The Commission finds that the unsold property presented by the Taxpayer is not comparable to the Subject Property.
22. The Commission finds and determines that the assessed value of the Subject Property for tax year 2019 is \$112,402.
23. 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*.
24. 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.
25. 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.

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 vacated and reversed.
2. The taxable value of the Subject Property for tax year 2019 is:

| | |
|---------------------|------------------|
| Land | \$ 18,000 |
| <u>Improvements</u> | <u>\$ 94,402</u> |
| Total | \$112,402 |

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

Steven A. Keetle, Commissioner