

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19R 0311 & 20R 0354

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

Background

1. The Subject Property is a residential parcel improved with a 696 square foot one story home, with a legal description of: S 48' of N 50' of Vac 26th Ave Adj Lot 1 Block 193, Bellevue, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$73,993 for tax year 2019 and \$77,995 for tax year 2020.
3. Bel Fury Investments Group, LLC (the Taxpayer) protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$61,909 for tax year 2019 and \$49,295 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$73,993 for tax year 2019 and \$77,995 for tax year 2020.
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 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 1.¹

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

16. The Taxpayer alleged that the value of the Subject Property was negatively impacted by the condition of the property for tax years 2019 and 2020.
17. The Taxpayer presented a Property Evaluation Report (PER), which purported to have been prepared by Lesley Cooper indicating that \$28,700 of repairs were needed on the Subject Property. The Taxpayer stated that the PER was actually prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer. Included with the PER were photographs of the exterior of the Subject Property showing the condition of the driveway, gutters, roof, and windows and photographs of the interior of the Subject Property showing the flooring and water heater.

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).

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 by the 2019 assessment date at issue in these appeals.
19. The PER was dated June 24, 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.
20. 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 should be reduced to fair.
21. The County Board presented the 2019 and 2020 Property Record File (PRF) for the Subject Property. The PRFs contains information about the characteristics of the Subject Property.
22. The County Board also presented photographs of the interior and exterior of the Subject Property for both tax years.
23. The PRF shows that the Subject Property has a condition rating of average.
24. The PRF also indicates that the Subject Property was receiving a lump sum adjustment that lowers its assessed value.
25. The County Appraisers stated that the property was inspected after the appeals were filed and based on that inspection the lump sum adjustment should be increased for tax years 2019 and 2020.
26. The County Board presented a narrative from the Sarpy County Real Estate Appraiser that inspected the Subject Property and a revised PRF showing the recommended lump sum adjustment and values for tax years 2019 and 2020 of \$70,840 and \$74,842 respectively. The County Appraisers stated that the new lump sum adjustment should applied to account for the cost to cure the deferred maintenance items discussed by the Taxpayer and noted during the inspection.
27. The Taxpayer has not presented information to demonstrate that the condition rating of average with the revised cost to cure adjustment for the Subject Property was arbitrary or unreasonable.
28. The Taxpayer stated at the hearing that they were no longer alleging that the assessed value of the Subject Property was not equalized with that of other comparable properties and presented no argument on that issue.
29. The Commission finds that the assessed value of the Subject Property as of the 2019 assessment date is \$70,840 with \$18,000 allocated to the land component and \$52,840 for the improvements.
30. The Commission finds that the assessed value of the Subject Property as of the 2020 assessment date is \$74,842 with \$18,000 allocated to the land component and \$56,842 for the improvements.
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.

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.

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 2019 and 2020 are vacated and reversed.
2. The taxable value of the Subject Property for tax years 2019 is:

Land	\$18,000
<u>Improvements</u>	<u>\$52,840</u>
Total	\$70,840

3. The taxable value of the Subject Property for tax years 2020 is:

Land	\$18,000
<u>Improvements</u>	<u>\$56,842</u>
Total	\$74,842

4. 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).
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 2019 and 2020.
8. This Decision and Order is effective on September 23, 2022.

Signed and Sealed: September 23, 2022

Steven A. Keetle, Commissioner