

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19R 0314 & 20R 0353

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

Background

1. The Subject Property is a residential parcel improved with a 1,352 square foot ranch style residence, with a legal description of: Lot 2 Block 107 Bellevue, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$98,574 for tax year 2019 and \$104,191 for tax year 2020.
3. The Taxpayer protested these values to the Sarpy County Board of Equalization (the County Board) and requested assessed values of \$41,395 for tax year 2019 and \$45,077 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$98,574 for tax year 2019 and \$104,191 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 alleged that the foundation of the Subject Property is in poor condition impacting the value of the Subject Property.
18. The Taxpayer alleged that gaps, between the plates installed to prevent the north basement wall from bowing and the wall, are causing water leakage into the basement. The Taxpayer also alleges that the wall continues to move. The Taxpayer stated that the installation of the plates in the north basement wall of the Subject Property did not come with a lifetime warranty.

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).

19. The Taxpayer indicated that in 2019 the tenant living in the Subject Property complained of water coming into the basement and damaging items located in the basement
20. The Taxpayer alleged that \$21,000 of work was required to repair the foundation of the Subject Property.
21. The Taxpayer presented pictures of the flooring in the living area and three pictures of the basement of the Subject Property.
22. 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.
23. The PRF and narrative presented by the County Board indicate that the Subject Property is receiving a 10% functional depreciation adjustment to account for the foundation plates and foundation issues for both tax years 2019 and 2020.
24. The County Board also presented photographs of the interior and exterior of the Subject Property taken in 2020 including the basement and the plates installed in the foundation.
25. The County Appraisers discussed the inspection of the Subject Property in March of 2020. The County Appraisers stated that during the 2020 inspection of the Subject Property they discovered updates to the Subject Property that the County Assessor's office was not aware of including new kitchen counters, a new A/C unit, newer windows, and a new bathroom sink. The County Appraisers stated that no permits had been pulled for the plumbing or A/C work as required. The County Appraisers noted the foundation plates installed on the foundation of the Subject Property but stated that the basement was dry and the north wall was straight.
26. The County Appraisers stated that based on the inspection of the interior and exterior of the Subject Property that both the quality and condition ratings for the Subject Property were too low and that the quality and condition ratings for tax years 2019 and 2020 should have been 30 or average quality and condition.
27. The County Board however did not present information to demonstrate the impact on the assessed value of the Subject Property of the increase in the quality and condition ratings of the Subject Property for tax years 2019 or 2020.
28. Further the County Board did not request that the assessed values for the Subject Property be increased for tax years 2019 or 2020.⁹
29. The Taxpayer has not presented information to demonstrate that the condition rating of fair+ for the Subject Property was arbitrary or unreasonable.
30. 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 and 2020.
31. 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,

⁹ See, Title 442 Neb. Admin. Code ch 5 §016.02A (6/21)

i.e., value per square foot, is by definition, unreasonable and arbitrary, under the Nebraska Constitution.”¹⁰

32. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
33. For tax year 2019 the Taxpayer presented the PRF for two properties located near the Subject Property.
34. The properties presented by the Taxpayer for tax year 2019 all have a lower quality and condition 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.
35. The Commission finds that the properties presented by the Taxpayer for tax year 2019 are not comparable to the Subject Property.
36. For tax year 2020 the Taxpayer presented the PRF for three properties located near the Subject Property
37. The properties presented by the Taxpayer for tax year 2020 all have a different quality and condition ratings than the Subject Property, and two of them are 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.
38. The Commission finds that the properties presented by the Taxpayer for tax year 2020 are not comparable to the Subject Property.
39. 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.
40. 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 along with the real estate transfer documents for these sales.
41. 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
42. The County Board presented the 2020 PRF for three 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 that sold near the assessment along with the real estate transfer documents for these sales.
43. The County Board presented the PRF for three other one story properties located near the Subject Property that had the same quality rating and characteristics of the Subject

¹⁰ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

¹¹ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

Property, two of which had the same condition rating to show uniform assessment methodology was applied by the County

44. 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*.
45. 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.
46. 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.

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

Land	\$ 18,000
<u>Improvements</u>	<u>\$ 80,574</u>
Total	\$ 98,574

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

Land	\$ 18,000
<u>Improvements</u>	<u>\$ 86,191</u>
Total	\$104,191

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