

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 19R 0316

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 962 square foot raised ranch style residence, with a legal description of: Lot 49 Birchcrest, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$117,974 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 \$80,502 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$117,974 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 A. 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
10. The Commission's review of a determination of the County Board of Equalization is de novo.²

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

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

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 should be reduced to account for the Condition of the roof as of the assessment date.
17. The Taxpayer alleged that the roof needed to be replaced as of the assessment date.
18. The Taxpayer presented an invoice for the replacement of the roof dated October 26, 2020, after the assessment date.
19. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$13,100 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, porch, deck and gutters.
20. The PER was dated June 22, 2020 and does not indicate that the roof is an item in need of repair or replacement.

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).

21. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property.
22. The PRF shows that the Subject Property has a condition rating of fair+.
23. The County Board presented a narrative from the Sarpy County Appraiser that inspected the property as well as a discussion of the condition of the Subject Property by the County Appraiser.
24. The Condition rating of the Subject Property determined in 2018 prior to the replacement of the roof was fair+. An interior inspection of the Subject Property in March of 2020 found the condition of the property to be average other than the deck and shed.
25. The PRF shows that the deck and shed of the Subject Property were depreciated at a higher amount than the rest of the Subject Property to account for their condition.
26. The Taxpayer has not presented information to demonstrate that the condition rating of fair+ for the Subject Property was arbitrary or unreasonable or did not account for the condition of the roof as of the assessment date.
27. The Taxpayer alleged that the recent sale of a comparable property demonstrated that the assessed value of the Subject Property was higher than market value.
28. The Taxpayer presented the PRF for a property that sold in May of 2017 for approximately \$63.84 per square foot to demonstrate market value. The Taxpayer did not present the real estate transfer statement for this sale.
29. The County Appraisers stated that the Taxpayer's sale was not considered a market sale as it was sold "as is" for cash, was not eligible for FHA or VA financing.
30. 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.
31. 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.
32. The Commission determines that the sold property presented by the Taxpayer is not representative of market value and does not demonstrate that the assessed value of the Subject Property is higher than market value.
33. 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.
34. 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
35. Comparable properties share similar use (residential, commercial/industrial, or

⁹ *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999)

- agricultural), physical characteristics (size, shape, and topography), and location.¹⁰
36. For tax year 2019 the Taxpayer presented the PRF for three properties located near the Subject Property.
 37. 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.
 38. The Commission finds that the differences in the per square foot assessed values between the Subject Property and the six properties presented as comparable properties by the Taxpayer and the County Board are due to differences in the characteristics of the properties such as age, condition, and amenities such as a garage, decks, patios, fireplaces etc.
 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 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	\$ 21,000
<u>Improvements</u>	<u>\$ 96,974</u>
Total	\$117,974

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.

¹⁰ See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010)

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