

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case Nos: 19R 0318 & 20R 0352

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 523 square foot one-story residence, with a legal description of: Lot 11 Martinview, Sarpy County, Nebraska.
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$64,431 for tax year 2019 and \$67,736 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 \$50,137 for tax year 2019 and \$47,300 for tax year 2020.
4. The County Board determined that the taxable value of the Subject Property was \$64,431 for tax year 2019 and \$67,736 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 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
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

1. 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.
2. The Taxpayer presented a Property Evaluation Report (PER) indicating that \$9,800 of repairs were needed on the Subject Property. The Taxpayer stated that the PER was 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, roof, and windows and photographs of the interior of the Subject Property showing the HVAC and water heater.
3. The PER was dated June 14, 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.

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).

5. The Taxpayer alleged that the County Board accepted the recommendation of the referee in the 2021 protest that the value should be reduced by the amount it would cost to complete the repairs shown in estimates presented to the County Board.
6. A decree fixing the value of property under a prior assessment is not admissible to prove value under a subsequent assessment, and a prior year's assessment is not relevant to a subsequent year's valuation.⁹ For this reason, the Commission finds that a subsequent year's decree is not relevant to the prior year's valuation. The Commission must make a determination of the assessed value for the current year based on the information presented to it.
7. 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.
8. The County Board also presented photographs of the interior and exterior of the Subject Property for both tax years as well as a table of repairs made to the Subject Property in 2018, as well as rental listing information.
9. The PRF shows that the Subject Property has a condition rating of average.
10. The County Appraisers stated that the property had an exterior inspection in 2017 and an interior and exterior inspection 2020 after the appeals were filed. Based on the 2020 inspection the appraiser stated that the characteristics of the Subject Property were correct other than the number of bedrooms and the amount of finished basement square footage. The County Appraiser stated that an adjustment should be made to correct the finished basement square footage for tax years 2019 and 2020.
11. The County Board presented a narrative from the Sarpy County Real Estate Appraiser that inspected the Subject Property and a revised PRF for each tax year showing values for tax years 2019 and 2020 of \$63,476 and \$66,717 respectively. The County Appraisers stated that the new recommended values would account for the revised amount of finished basement square footage noted during the inspection.
12. The Taxpayer has not presented information to demonstrate that the condition rating of average was arbitrary or unreasonable.
13. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with other comparable properties.
14. 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."¹⁰
15. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹

⁹ *DeVore v. Bd. of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988), *Kohl's Department Stores v. Douglas County Board of Equalization*, 10 Neb.App. 809, 814, 638 N.W.2d 877, 881-882 (2002).

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)

16. The Taxpayer presented the 2019 PRF for three properties located near the Subject Property.
17. The properties presented by the Taxpayer all have a lower condition rating than the Subject Property and two of the three do not have basements like the Subject Property but are built on a slab. The County Appraisers stated that the properties presented by the Taxpayer would not be comparable due to the difference in condition, lack of basement or amount of basement finish.
18. The Taxpayer presented the 2019 PRF for three properties located near the Subject Property.
19. The properties presented by the Taxpayer all have a lower condition rating than the Subject Property and two of the three do not have basements like the Subject Property but are built on a slab. The County Appraisers stated that the properties presented by the Taxpayer would not be comparable due to the difference in condition, lack of basement or amount of basement finish.
20. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
21. The Taxpayer presented the 2020 PRF for one property located near the Subject Property.
22. The property presented by the Taxpayer has a lower condition rating than the Subject Property and no finished basement. The County Appraisers stated that the properties presented by the Taxpayer would not be comparable due to the difference in condition, lack of basement finish.
23. The 2020 PRFs presented by the Taxpayer demonstrate that the differences in the assessed values between the Subject Property and the other property presented are due to this difference in characteristics such as size, condition, and basement finish.
24. 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*.
25. The Commission finds that the assessed value of the Subject Property as of the 2019 assessment date is \$63,476 with \$16,000 allocated to the land component and \$47,476 for the improvements.
26. The Commission finds that the assessed value of the Subject Property as of the 2020 assessment date is \$66,717 with \$16,000 allocated to the land component and \$50,717 for the improvements.
27. 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.
28. 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	\$16,000
<u>Improvements</u>	<u>\$47,476</u>
Total	\$63,476

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

Land	\$16,000
<u>Improvements</u>	<u>\$50,717</u>
Total	\$66,717

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