

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Bel Fury Investments Group LLC,
Appellant,

v.

Sarpy County Board of Equalization,
Appellee.

Case No: 19R 0319

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

Background

1. The Subject Property is a residential parcel improved with an 888 square foot one story residence, with a legal description of: Lot 33A2 Marian Park & 10' Vac Lane Adj, Sarpy County, Nebraska
2. The Sarpy County Assessor (the County Assessor) assessed the Subject Property at \$129,020 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 \$106,787 for tax year 2019.
4. The County Board determined that the taxable value of the Subject Property was \$129,020 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 should be reduced to account for the Condition of the Subject Property as of the assessment date.
2. The Taxpayer presented a Property Evaluation Report (PER) prepared by Connie Watson, a contractor and construction estimator employed by the Taxpayer, indicating that \$21,900 of repairs were needed on the exterior of the Subject Property, and did not include interior damage. Included with the PER were photographs of the exterior of the Subject Property showing the condition of the concrete, awning, steps, exterior A/C unit, shed, gazebo, deck, pavers, gutters, and garage siding as well as interior pictures of

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).

carpet, basement walls and sliding doors. The PER contained a 2017 insurance estimate for the report of hail damage to the Subject Property.

3. The PER was dated June 14, 2020, but the Taxpayer stated that the items in the PER were the same on the assessment date.
4. The Taxpayer presented an invoice for the replacement of the roof after the assessment date. The invoice was for \$12,123 and included the replacement of the gutters and downspouts.
5. The Taxpayer stated that the sliding doors on the sunroom on the back of the Subject Property have warped and do not slide and there has been water damage to the flooring due to water intrusion from the outside and humidity inside the sunroom.
6. 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 lowered for tax year 2019.
7. The Taxpayer argued that the County Board reduced the value of the Subject Property in the prior assessment year and reduced the value of the Subject Property in the Subsequent tax year due to the condition of the Subject Property and that therefore the condition should be lowered in the tax year at issue.
8. 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.
9. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property.
10. The PRF shows that the Subject Property has a condition rating of average+.
11. The County Board presented a narrative from the Sarpy County Appraiser that inspected the property. This narrative indicates that the Subject Property was inspected March of 2020 and that this inspection confirmed the data contained in the 2019 PRF for the Subject Property.
12. The County Appraiser stated that during the March 2020 inspection the Subject Property had all new windows, a large porch on the back and a front porch with its own heat and A/C, newer vinyl siding, and more updates than would be expected for a house built in 1924. The appraiser stated that he only viewed the roof from the ground but that the tenants indicate no problems with the roof and no leaks. The County Appraiser stated that based on the inspection of the Subject Property he agreed with the condition rating of average+ for the Subject Property.

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).

13. The Taxpayer has not presented information to demonstrate that the condition rating of average+ was arbitrary or unreasonable.
14. The Taxpayer alleged that the per square foot assessed value of the Subject Property was not equalized with other comparable properties.
15. 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
16. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.¹¹
17. The Taxpayer presented the PRF for two properties located near the Subject Property.
18. The properties presented by the Taxpayer have a lower condition rating than the Subject Property and the Subject Property has more amenities such as closed wall porches and a larger detached garage with a deck that the other properties do not. 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.
19. The Commission finds that the properties presented by the Taxpayer are not comparable to the Subject Property.
20. 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.
21. The County Board presented the PRF for three one story or ranch properties located near the Subject Property that sold near the assessment along with the real estate transfer documents for these sales.
22. The County Board presented the PRF for three other one story or ranch properties located near the Subject Property that had the same quality rating of the Subject Property, two of which that also had the same condition rating to show uniform assessment methodology was applied by the County.
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 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.
25. 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.

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)

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	\$ 26,000
<u>Improvements</u>	<u>\$103,020</u>
Total	\$129,020

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